

MUNICIPAL AFFAIRS AND HOUSING

TAX RECOVERY

***A GUIDE FOR ALBERTA
MUNICIPALITIES***

Alberta

Alberta Municipal Affairs and Housing (2007) *Tax Recovery, A Guide for Alberta Municipalities*
Edmonton: Alberta Municipal Affairs and Housing

For more information contact:

Municipal Advisory Services
Local Government Services
Alberta Municipal Affairs and Housing
17th Floor, Commerce Place
10155 – 102 Street
Edmonton, Alberta T5J 4L4
CANADA

Telephone: 1 (780) 427 2225

Toll Free: 310 0000 (in Alberta only)

Fax: 1 (780) 420 1016

Website: www.municipalaffairs.gov.ab.ca

ISBN 978-0-7785-6010-4 (print)

ISBN 978-0-7785-6012-8 (internet)

Table of Contents

Introduction	1
UNIT 1: THE TAX RECOVERY PROCESS	2
UNIT 2: RECOVERY OF TAXES RELATED TO LAND	4
Unit 2.1: Overview Part 10, Division 8	4
Introduction	4
The Purpose of Part 10, Division 8	4
When are Taxes in Arrears?	4
The Tax Recovery Process	5
Prepare an Arrears List	5
Tax Recovery Notification	6
Right to Pay Tax Arrears	7
Warning of Sale	7
Offer of Parcel for Sale	8
Reserve Bid and Conditions of Sale	8
Advertisement of Public Auction	8
Contacting the Owner and Interested Parties Before the Auction	9
Adjournment of Auction	9
Holding the Auction	10
Municipal Responsibilities/Rights Following the Auction	10
Municipalities' Right to Possession Following the Public Auction	10
Transfer of Parcel to Municipality	11
Municipal Responsibilities for Properties Sold at the Public Auction	11
Municipal Process for Disposing of Unsold Properties	11
Revival of Title	12
Proceeds from the Sale or Rental of Tax Recovery Property	13
Transfer to Municipality after 15 Years	14
Special Cases	14
Tax Arrears on Subdivided Land	14
Contaminated Land	14
Alternative Collection Options	15
Other Legal Claims	15
Collection of Rent	15
Tax Agreement	15
Lease of Property	15
Unit 2.2: Flowchart and Checklist	16
Introduction	16
Unit 2.3: Forms, Letters, and Guidelines	21
Tax Recovery Arrears List	21
Discharge of Tax Recovery Notification	22
Tax Recovery Notice	23
Notification of Sale by Public Auction	24
Notification of Municipal Acquisition	25
Notification of Revival of Title	26
Affidavit Re Value of Land	27
Tax Agreement	28
Schedule A	31
Letter - Early Notice (Optional)	32
Letter - Notification of Public Auction	33
Public Auction Guidelines	34

UNIT 3: RECOVERY OF TAXES RELATED TO DESIGNATED MANUFACTURED HOMES 35

Unit 3.1: Overview Part 10, Division 8.1	35
The Purpose of Part 10, Division 8.1	35
When are Taxes in Arrears?	35
The Tax Recovery Process	36
Prepare an Arrears List	36
Tax Recovery Lien	37
Registering the Tax Recovery Lien (Statutory Charge)	38
Avoid Duplication	40
Notification by Municipality	40
Removal of Designated Manufactured Home or Improvements	41
Right to Pay Taxes	41
Offer of Designated Manufactured Home for Sale	42
Advertising the Auction	42
Contacting the Owner and Interested Parties Before the Auction	42
Setting a Reserve Bid and Sale Conditions	42
Adjourning the Auction	43
Holding the Auction	43
Municipal Responsibilities/Rights Following the Auction	44
Municipality's Rights to Possession Following the Public Auction	44
Municipal Rights and Responsibilities for Designated Manufactured Homes Not Sold at the Public Auction	44
Municipal Responsibilities on Designated Manufactured Homes Sold at the Public Auction	45
Return of Designated Manufactured Home	45
Selling Occupied Designated Manufactured Homes	46
Proceeds from Sales and Leases	46
Transfer to the Municipality After 10 years	47
Designated Manufactured Home Moved to Another Municipality	47
Alternative Collection Options	47
Collection of Rent	47
Tax Agreement	48
Lease of Designated Manufactured Home	48
Unit 3.2: Flowchart and Checklist	49
Introduction	49
Unit 3.3: Forms, Letters, and Guidelines	54
Arrears List	54
Designated Manufactured Homes	54
To be posted no later than March 31	54
Financing Statement	55
Financing Change Statement	56
Serial Number Goods Addition	57
Debtor/Secured Party Additions	58
General Collateral Additions	59
Court Order, Other Changes and Additional Information	60
Verification Statement	61
Tax Agreement	64
Schedule A	67
Letter - Early Notice (Optional)	68
Letter - Notice of Tax Arrears and Possible Sale at Public Auction	69
Letter - Notification of Public Auction	70
Public Auction Guidelines	71

UNIT 4: RECOVERY OF TAXES NOT RELATED TO LAND	72
Unit 4.1: Overview Part 10, Division 9	72
Introduction	72
The Purpose of Part 10, Division 9	72
When are Taxes in Arrears?	72
The Tax Recovery Process	73
Preparing a Distress Warrant	73
Seizure of Goods	74
Bailee's Undertaking	75
Right to Pay Taxes	76
Advertising the Auction	76
Date of Auction	76
Adjourning the Auction	76
Holding the Auction	77
Municipal Responsibilities/Rights Following the Auction	77
Proceeds from Sale of Goods	77
Distribution of Surplus Sale Proceeds	77
Seizure of Designated Manufactured Homes	78
Alternative Collection Options	78
Collection of Rent	78
Unit 4.2: Flowchart and Checklist	79
Introduction	79
Unit 4.3: Forms and Letters	84
Distress Warrant	84
Bailee's Undertaking	85
Notice of Seizure of Personal Property	86
Notice of Objection to Seizure of Personal Property	87

DISCLAIMER:

Should this manual conflict with the *Municipal Government Act*, in word or interpretation, the legislation shall prevail.

Introduction

The following manual has been written to assist municipalities and other stakeholders in working through the three tax recovery processes that are outlined in the *Municipal Government Act* (MGA), RSA 2000, Chapter M-26. This manual contains detailed descriptions of the steps required to satisfy the legislative requirements relating to the various tax recovery processes. It also contains flowcharts and checklists that highlight the main steps and timelines. The manual also contains the various forms that may be required by Alberta Land Titles or the Personal Property Registry. Sample letters and tax agreements are also provided, which may be of use to municipalities and stakeholders.

How to Use this Manual

This manual has been separated into five “Units.” Unit 1 provides a general overview of the tax recovery process. It outlines the main purpose of the tax recovery process and highlights the key principles that apply to each of the tax recovery proceedings. Unit 1 also describes the general roles and responsibilities of the various parties that are involved in the tax recovery process – specifically, the municipality, the landowner, and Alberta Municipal Affairs and Housing.

Units 2, 3 and 4 deal with the three separate tax recovery processes as set out in Part 10 of the MGA. Unit 2 deals with “Recovery of Taxes Related to Land” (Division 8); Unit 3 deals with “Recovery of Taxes Related to Designated Manufactured Homes” (Division 8.1); and Unit 4 deals with “Recovery of Taxes Not Related to Land” (Division 9).

Units 2, 3 and 4 are each divided into three parts, each containing the following:

- A detailed explanation of the specific tax recovery process - its purpose, as well as the steps, timelines and legal requirements stated in the MGA. This material is particularly helpful for anyone who is unfamiliar with the tax recovery process or who wishes to refresh their understanding and skills with respect to tax recovery.
- A flowchart of the tax recovery process and a checklist that summarizes the key points that must be carried out during the tax recovery process.
- Examples of the forms that are identified in the previous sub-units and samples of the types of notices that municipalities will need during the tax recovery process.

Unit 5 provides a glossary of terms used throughout this document.

It is important to recognize that this manual has been developed as a reference for, and companion document to, Part 10 of the MGA. This manual is not the definitive work on tax recovery nor can the manual anticipate every aspect, circumstance or situation that municipalities may encounter while working through their specific tax recovery process. Therefore, municipalities should familiarize themselves with the specific tax recovery legislation that directs the tax recovery process which they are undertaking.

Unit 1:

***The Tax Recovery
Process***

UNIT 1: THE TAX RECOVERY PROCESS

Understanding the Tax Recovery Process

Municipalities rely on the collection of property taxes to provide services, to make improvements to their infrastructure and to meet their financial obligations. The Provincial Government recognizes municipalities' reliance on property tax revenue so, to ensure that everyone who is required to pay municipal taxes does so, the Province passed legislation that ensures the municipality can collect the taxes that are due.

The Provincial Government also recognizes that land or property represents a significant, if not the largest, investment for most Albertans. The *Municipal Government Act* (MGA) is drafted on the principle of protecting people's interest in their property.

The legislation gives the municipality the authority to enforce payment of legally levied taxes.

Part 10 of the MGA provides for three tax recovery processes:

1. Recovery of Taxes Related to Land (Division 8);
2. Recovery of Taxes Related to Designated Manufactured Homes (Division 8.1); and,
3. Recovery of Taxes Not Related to Land (Division 9)

Regardless of which process is used, it is important to understand that the tax recovery process is not simply an exercise in filling out forms, sending registered letters and holding auctions. Rather, the tax recovery process is an important means through which a municipality maintains its fiscal health. Similarly, it is important to recognize that the purpose of the tax recovery process is to provide a means through which the municipality receives the taxes to which it is entitled. The tax recovery process is not intended as a means by which municipalities acquire land or other property.

The Role of the Municipality in the Tax Recovery Process

The municipality is the central participant in the tax recovery process.

It is the municipality that is owed the taxes and therefore the party with the greatest interest in ensuring the process is started. The municipality will be the "clearinghouse" through which all activity takes place. In addition, the municipality will be the authority responsible for ensuring that tax recovery processes are initiated and completed as required by the legislation.

It is the municipal council that establishes tax rates, sets reserve bids and approves tax sales, and the municipal administration that identifies taxes in arrears and conducts public auctions.

Given these numerous responsibilities, it is extremely important that a process be put in place that ensures not only that the steps are completed properly and at the proper times, but also that an accurate and complete record of each step is kept. If proper controls and

processes are not developed, the tax recovery process can become more complicated than need be. As stated previously, the legislation is also intended to protect the landowner's or assessed person's interest in his or her land or property. Therefore, it is critical that the municipality ensures that all steps are followed. Failure on the municipality's part to do this may result in the tax recovery process being set aside by the courts and the municipality being directed to begin the process all over again.

Similarly, other parties with interests in the property (mortgage holders, lien holders, etc.) must also be advised of the tax recovery proceedings so that they have the opportunity to protect their interests in the land or improvements. Given that all encumbrances, with the exception of those outlined in sections 423(1), 424(3), 428.2(4), 436.14, and 436.2, are removed following the sale of land or property at public auction it is important that municipalities ensure that anyone who has an interest or encumbrance registered against the land or property is notified of the tax recovery proceedings.

The Role of the Assessed Person in the Tax Recovery Process

Section 304 of the MGA identifies the assessed person responsible for paying the appropriate property tax. Section 331 of the MGA obligates this person to pay taxes. The fact that tax recovery proceedings are being undertaken reflects that the assessed person has not or cannot fulfill this obligation. Regardless of how co-operative a landowner is in terms of paying taxes, it is critical to ensure that the landowner is advised of the key steps occurring during the tax recovery process and is made aware of the options available so that the person has every opportunity to pay the taxes that he or she owes.

The Role of Municipal Affairs and Housing in the Tax Recovery Process

Municipal Advisors with the Municipal Services Branch of Alberta Municipal Affairs and Housing are available as resources if municipal staff need assistance. If a municipality is conducting a tax recovery proceeding and cannot find the information needed in this manual, or if there is a detail in the MGA that needs to be clarified or interpreted, please contact the Branch at:

Municipal Services Branch
17th Floor, 10155 - 102 Street
Edmonton, Alberta T5J 4L4
Phone: (780) 427-2225
Fax: (780) 420-1016

Staff at the Alberta Land Titles Office and at the Alberta Personal Property Registries are not responsible to ensure that the proper steps are taken with respect to the registration of the tax arrears notification or tax recovery lien. Guaranteeing that forms are completed properly, that land descriptions or serial numbers are correct and complete, and that there is no duplication of Tax Recovery Notifications or Tax Recovery Liens is the sole responsibility of the municipality.

Unit 2:

***Recovery of Taxes
Related to Land***

UNIT 2: RECOVERY OF TAXES RELATED TO LAND

Unit 2.1: Overview Part 10, Division 8

Introduction

Although this Unit is designed to help municipalities and other stakeholders understand the enforcement of the tax recovery provisions of Part 10, Division 8 of the *Municipal Government Act* (MGA), it is strongly recommended that all parties read Division 8 before reading this unit of the manual. By reading the MGA all parties will have a better understanding of the intent of the Act and the context of the information contained in this unit of the manual.

The Purpose of Part 10, Division 8

The purpose of Part 10, Division 8 is to provide municipalities with the authority to collect tax arrears that relate to property taxes, local improvement taxes, or special taxes – as detailed under section 382 of the MGA - and use the Alberta Land Titles system to aid in the enforcement of the collection of taxes levied against land and improvements.

When are Taxes in Arrears?

The issue of when parcels of land with outstanding taxes are to be placed on the tax recovery arrears list causes confusion for some. Therefore, before the tax recovery process is considered, it is important to understand when taxes are in arrears.

The MGA identifies outstanding taxes in two different ways; taxes that are “unpaid” and taxes that are in “arrears.” It is important to understand the difference between these terms to ensure that parcels of land are not mistakenly placed on, or left off, the tax arrears list.

Section 326 and section 332 of the MGA are applicable to understanding the issue of tax arrears.

Section 326(c) of the MGA defines “tax arrears” as “taxes that remain unpaid after December 31 of the year in which they are imposed.” The key part of this definition is the phrase “that remain unpaid after December 31 of the year in which they are imposed.” Many individuals confuse unpaid taxes, which may be subject to penalty under section 344, with taxes in arrears. Again, taxes are in arrears only if they are unpaid as of January 1 of the year following the year in which they are imposed.

Section 332 states that taxes imposed under Part 10, other than a supplementary property tax or a supplementary business tax, are deemed to have been imposed on January 1. Therefore, regardless of whether the tax notice is sent in May or October, legally, January 1 is the date the taxes are considered imposed.

For example, the Town of Wherever mails its tax notice on May 1, 2006. The taxes are due by June 30. On July 1 any outstanding taxes are considered "unpaid" and a tax penalty may be applied under section 344. If these taxes remain unpaid as of January 1, 2007, the taxes are then considered to be in arrears (section 326(c)). However, the property taxes must continue to be in arrears past January 1, 2008, (two years after the date imposed), before the property is added to the tax arrears list – (March 31, 2008).

Therefore, when a municipality is preparing a tax arrears list for properties that have tax arrears of more than one year, they must begin their calculations from January 1 following the year in which the tax was imposed, not from the date the tax notice was sent.

When discussing the penalty associated with unpaid taxes do not refer to the penalty as "interest." The MGA provides for a penalty for non-payment of taxes and while the amount of penalty is determined by using a percentage calculation, municipalities should ensure that ratepayers are aware that they are being penalized for not paying their taxes.

The Tax Recovery Process

Prepare an Arrears List

Section 412

The tax recovery process begins with the preparation of a tax arrears list. A sample tax recovery arrears list form is shown on page 21.

Each year a municipality **must, not later than March 31**, prepare a list of all parcels of land that are more than one year in arrears.

Prior to developing the tax arrears list, a municipality may want to consider sending a letter to each affected property owner (see sample on page 32). Late January to mid-February is a good time to send such a letter. Advise him or her that the property is going to have a tax notification placed on it and that he or she can avoid this action from occurring by paying the outstanding amount.

Municipalities should complete the tax arrears list in triplicate and have the designated officer, in most cases the Chief Administrative Officer, sign the form and place the municipal seal on two copies. The two sealed copies should be forwarded to the Registrar at the Land Titles Office. The unsealed copy of the arrears list must be posted in a place in the municipal office that is accessible to the general public during regular business hours.

The Tax Arrears List must be forwarded to the appropriate Land Titles Office no later than March 31 each year.

For municipalities in or north of township 35, the arrears list must be sent to the Land Titles Office in Edmonton. For municipalities in or south of township 34 the arrears list must be sent to the Land Titles Office in Calgary. The addresses for the respective offices are as follows:

The Registrar
Land Titles Office
John E. Brownlee Building
10365 – 97 Street
Edmonton, Alberta
T5J 3W7
Phone: (780) 427-2742

The Registrar
Land Titles Office
Alberta Government Services Building
710 – 4 Avenue S.W.
Calgary, Alberta
T2P 0K3
Phone: (403) 297-6511

A tax arrears list must not include a parcel of land in respect of which there is in existence a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.

Therefore, when completing the tax arrears list ensure that one of two things occur:

- **If the previous tax recovery notification should be there (a tax recovery process is underway), exclude the property from the new tax arrears list.**
- **If the previous tax recovery notification should not be there (a previous tax recovery process has been concluded but the notice was not removed when it should have been), have the tax recovery notification previously endorsed against the parcel of land removed prior to the registration of a new tax recovery notification.**

The removal of the tax notification is accomplished by completing the "Discharge of Tax Notification" form and sending it to the appropriate Land Titles Office.

The Land Titles Office previously would check to ensure that no duplications would occur. This is a service that they no longer provide. Therefore, the municipality is solely responsible to ensure that no duplicate tax notifications occur.

The municipality must also notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar. It is suggested that this letter be sent at the same time that the arrears list is forwarded to the Land Titles Office.

It is recommended that any of the notifications that are required by the MGA be sent by registered mail. Sending the notifications by registered mail provides a municipality with an independent record of when the notification was sent. This record can also be followed up if a municipality is ever challenged regarding its compliance with the process. An owner's refusal to accept registered mail does not invalidate the process if the mailing address listed on the assessment roll is used. As with other legitimate tax recovery costs, the fees for sending the letter registered can be added to the tax arrears costs charged against the property.

Tax Recovery Notification

Section 413

Once the Registrar receives the arrears list, he or she must endorse a tax recovery notification on the Certificate of Title. The Registrar must certify on one of the copies of

the tax arrears list that the tax recovery notification has been endorsed and return it to the municipality with a bill. The municipality is responsible for this cost but it may add this cost to the taxes owing for the appropriate parcel(s) shown on the tax arrears list (section 553(f)).

Once the tax recovery notification is in place, only the municipality that requested the endorsement can authorize the removal of the notification.

Once the tax recovery notification has been endorsed on the Certificate of Title for a parcel of land, the person who is liable to pay the taxes must not remove any improvements for which taxes can be levied and for which that person is responsible (section 414) without the approval of the municipality.

Right to Pay Tax Arrears

Section 415

After a tax recovery notification has been endorsed on the Certificate of Title, anyone can pay the tax arrears owing against the property. When the municipality receives payment of the tax arrears (and related costs, such as administrative cost, interest, or any other charges related to the parcel), the designated officer completes the "Discharge of Tax Recovery Notification" form and sends it to the appropriate Land Titles Office.

Do not send a Discharge of Tax Recovery Notification to the Land Titles Office until the arrears and penalties are paid in full (e.g., the cheque clears the bank).

Remember, after a notice is removed, it is not possible to have it reinstated without starting the tax recovery process from the beginning.

Warning of Sale

Section 417

Once the Registrar has endorsed the tax recovery notification he or she must, not later than August 1, send a notice (as shown on page 23) to the owner of the parcel of land, to any person who has an interest registered against the parcel, and to each owner of an encumbrance as shown on the Certificate of Title. The notice must state that if the tax arrears are not paid by March 31 of the following year, the municipality will offer the parcel for sale at public auction, and the municipality may become the owner of the parcel if it is not sold at public auction.

The municipality may wish to follow up with the Land Titles Office between June 30 and July 15 to ensure that this notification has been given.

Unless the municipality decides to pursue the options listed at the end of this Unit under the heading Alternate Collection Options, the municipality must wait until after March 31 of the following year before proceeding with the following tax recovery steps.

Offer of Parcel for Sale

Section 418

Unless an agreement for the payment of tax arrears is reached between the municipality and the landowner, the municipality **must** offer for sale at a public auction any land shown on its tax arrears list. Properties that are offered for sale are those properties that received notification from the Registrar by August 1 of the previous year.

Reserve Bid and Conditions of Sale

Section 419

The council must establish a reserve selling price before it can auction a property. The reserve bid is set at a level that is as close as reasonably possible to the market value of the parcel.

The municipality may acquire the services of an independent, professional appraiser to provide it with a written report that establishes market value for setting the reserve price.

In addition to the reserve bid the council must also establish any terms and conditions that apply to the sale.

For example, the council may require full payment for the parcel by cash or certified cheque or the council may allow partial payment on the day of the auction with full payment to be made within 30 or 60 days following the auction.

Advertisement of Public Auction

Section 421

The municipality must advertise the public auction. The information in the advertisement must specify the date, time, and location of the auction and a description of each parcel of land to be offered for sale. The advertisement must also include any terms and conditions of the sale (e.g., cash only, percentage down or payment by a specified date). The advertisement must also state that the municipality may, after the public auction, become the owner of any parcel of land not sold at the auction.

The property or properties being auctioned must be advertised in one issue of the Alberta Gazette. The auction date must be listed in the Gazette not less than 40 days and not more than 90 days before the auction.

As a safety precaution, municipalities may wish to list the Certificate of Title number in Gazette advertisements along with the legal land description of the parcel. It is possible that a sale may not be rejected when legal descriptions are incomplete or incorrect if the correct Certificate of Title numbers have been used.

For advertising in the Alberta Gazette contact:

The Alberta Gazette
Main Floor, Park Plaza
10611 – 98 Avenue
Edmonton, Alberta
T5K 2P7

email: albertagazette@gov.ab.ca

Fax: (780) 452-0668

The Gazette is published twice monthly, first on the 15th and again at the end of the month. The deadline for submission of an advertisement is two weeks prior to the publishing day. Take into account the submission deadline when setting the auction timelines.

A second advertising requirement is that the auction must be advertised in one issue of a newspaper having general circulation in the municipality. The advertisement must appear not less than 10 days and not more than 20 days before the date on which the public auction is to be held.

These advertising processes are mandatory requirements. If these standards are not met the auction results can be nullified if challenged through the courts.

Contacting the Owner and Interested Parties Before the Auction

Section 421(4)

Not less than four weeks before the date of the auction, the municipality must send the owner of each parcel and any other party with an interest in the parcel or parcels to be sold at the auction a copy of the advertisement that appeared in the Gazette (see sample on page 33). Therefore, besides the name of the person or persons or company or companies on the tax roll, the municipality must obtain a copy of the current Certificate of Title to make sure it notifies all other individuals or organizations with a registered interest in the property.

Adjournment of Auction

Section 422

A municipality may adjourn a public auction to any date within two months of the advertised sale date. The municipality is not required to advertise the adjournment but a notice must be posted, in an accessible public place, including the new date and place when the auction will be held. There are no restrictions for adjourning an auction.

Adjournments are often put in place to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met.

An example is, if the advertisement in a local newspaper was not placed within the 10-to-20 day period preceding the auction, the auction could be postponed to meet this condition.

Holding the Auction

Section 423

The municipality must select a person to conduct the auction. While a professional auctioneer may be used, in most cases the Chief Administrative Officer or other designated officer will act as the auctioneer. Guidelines for conducting the auction process are listed on page 34.

Once the auctioneer declares a property as sold, the sale is final and no further approval is required. The auctioneer cannot reopen a property for sale after it is declared sold. The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council with information in case a sale is protested. The person purchasing the property acquires the land free of all encumbrances, except those listed in section 423(1).

Section 429 restricts the auctioneer, councillors, the Chief Administrative Officer, and the employees of the municipality from bidding on, or acting as an agent in buying the property. However, a designated officer or employee can be directed to bid for or buy a parcel of land for the municipality if it wishes to become the owner of the property.

Once the property is sold to another individual, the previous owner has no further right to pay the tax arrears.

If no offer is received on a property or if the reserve bid is not met, the property cannot be sold at the auction. In this case the property remains unsold. The following sections describe options for dealing with unsold properties.

Municipal Responsibilities/Rights Following the Auction

The municipality can dispose of property not sold at the public auction at any time following the auction once it has taken title. However, it must follow certain steps in disposing of property and in retaining and paying out any proceeds generated from selling the property.

Municipalities' Right to Possession Following the Public Auction

Section 420

A municipality is entitled to possess the property from the date on which a parcel of land is offered for sale at public auction. If a property is occupied and the municipality encounters resistance, it will have to apply to the Court of Queen's Bench for an order for possession (section 420(2)).

In the case of properties being rented out as a residence by the previous owner, the municipality must follow the processes for possession outlined in the *Residential Tenancies Act*.

Transfer of Parcel to Municipality

Section 424

A municipality may become the owner of a parcel immediately after the public auction if the parcel is not sold at the auction. If it chooses to take title, the municipality must request that the Land Titles Office cancel the existing Certificate of Title and issue a new one in the municipality's name (section 424(2)). This request is made by submitting the "Notification of Municipal Acquisition" form, shown on page 25, to either the Edmonton or Calgary Land Titles Offices.

If the municipality takes title, the property becomes exempt from future taxation. By taking title, the municipality can dispose of the property in accordance with section 425 of the MGA. If the municipality chooses not to take title, the property remains taxable; however, the municipality cannot dispose of the property.

Where a municipality acquires title, the title, while placed in the municipality's name, retains a tax forfeiture notification against it.

Municipal Responsibilities for Properties Sold at the Public Auction

Anyone purchasing a property at a public auction acquires the property free of all encumbrances aside from the exceptions listed in section 423(1).

After the successful sale of a property at a public auction, the "Notification of Sale by Public Auction" form, shown on page 24, must be completed and submitted to a Land Titles Office. The form should be accompanied by an "Affidavit re Value" form, shown on page 27, and (if applicable) a "Foreign Ownership of Land Declaration" form, available from a Land Titles Office.

Municipal Process for Disposing of Unsold Properties

The municipality must acquire title to the land, pursuant to section 424, before disposing of the property in accordance with section 425(1).

Even after title is obtained under section 424, the municipality is obligated to protect the previous property owner's interests by selling the property at a price as close as reasonably possible to the market value.

After receiving the title to a property under section 424, a municipality may grant a lease, licence, or permit in respect of the parcel. The municipality can establish the conditions for these types of dispositions; however, the previous owner's interests must still be considered.

If the municipality should rent or lease a property before selling or acquiring it under section 425(1), and in the process generate revenue equal to or exceeding the taxes in arrears plus any lawful expenses incurred by the municipality, the municipality must return the title, and any surplus revenues, to the previous owner. The owner must honour the remaining term of the lease.

After receiving title under section 424, the municipality can sell the property, at any time, and according to any conditions it chooses. Some possible options include direct sale, by tender, through a real estate agreement; or by any other means that support selling the property at market value. On selling the property, the municipality must transfer the title to the purchaser by submitting a "Transfer of Land" form to a Land Titles Office. This form can be downloaded from the Government of Alberta main page (www.gov.ab.ca), under 'Forms, Land Titles Commonly Used Forms – Government of Alberta'. Also contained on this document is an "Affidavit Re Value of Land," which must be completed. The only liens and encumbrances remaining will be those in favour of the Crown in right of Canada and the other exceptions noted in section 424(3).

Following the sale of a property, the municipality is required under section 425(4) to ask the Registrar of Land Titles to remove the words "Tax Forfeiture" from the new title. This requirement is satisfied by submitting the "Discharge of Tax Recovery Notification" form, as contained on page 22, to the appropriate Land Titles Office.

Should the municipality wish to acquire "fee simple" title to a property, the property can be purchased by the municipality by paying the market value of the property in accordance with section 425(1)(b).

There is a substantial difference between the titles the municipality receives to properties not sold at public auction (and subsequently transferred to the municipality), and the title that the municipality receives should it purchase the property under section 425(1)(b). In the first situation, the Certificate of Title retains the Tax Forfeiture clause and in the second it does not. This means that in the former case the municipality continues to be responsible for looking after the previous owner's interests. In the latter situation these interests are fully discharged and the municipality can use or dispose of the property, the same as any other "fee simple" landowner.

Revival of Title

Section 426

If the tax arrears and all related costs in respect of a property are paid after the municipality acquires the title to the property under section 424 but before selling the property under section 425, it must notify the Registrar to revive the title of the original owner. As noted previously, payment of tax arrears can be handled in a number of ways, including by lease or rent or by payment by the previous owner(s) or by any other party. Under section 426(3)(a), the property would then be subject to the same notifications, charges and encumbrances before the municipality became the owner. Specifically, the municipality would calculate all taxes and penalties for the time the municipality had

owned the property. This only applies to revival of title. A "Notification of Revival of Title" form must be completed and sent to the Registrar of Land Titles. A sample form is contained on page 26.

Proceeds from the Sale or Rental of Tax Recovery Property

Sections 427 and 428

All sale, lease, licence, or permit revenues must be paid into a separate account maintained by the municipality for proceeds from Division 8 tax recovery properties. It is important to recognize that any remedial costs owed to the Province have first priority in terms of the sale proceeds. The issue of remedial costs is described in greater detail under "*Contaminated Land*" below.

The municipality must pay itself the tax arrears and other legal costs provided for under section 427(2). The municipality may, if it is satisfied that there are no debts secured against the property, pay the remaining funds to the previous landowner. If the municipality is not satisfied that there are no debts secured against the property, it must notify the previous owner of the surplus funds and that he or she must make application under section 428 to recover all or part of the proceeds.

Under section 428, the former owner or other interested party will have up to 10 years after the date of the public auction or the date of a sale under section 425 to make an application to the courts to be paid the surplus sale proceeds. If no application is made within the 10 year period, the municipality may use the money for its own purposes (section 428.1).

Transfer to Municipality after 15 Years

Section 428.2

When a tax forfeiture parcel of land has been offered for sale but not sold at a public auction, the municipality may eventually request the Registrar to cancel the existing certificate of title for the parcel and issue a certificate of title in the name of the municipality.

This request can be made 15 years following the date of the public auction.

Once this new title is issued, all responsibilities of the municipality under Division 8 of Part 10 of the MGA to the previous owner of the parcel cease.

However, if there are any remedial costs owing in respect of the parcel of land the municipality will be responsible to deposit funds in the Environmental Protection and Enhancement Fund established under the *Environmental Protection and Enhancement Act*. The amount must be equal to the lesser of the fair market value of the parcel of land or the amount of the remedial costs.

A municipality that becomes the owner of a parcel of land under this section acquires it free of all encumbrances, except those listed in section 428.2(4).

Special Cases

Tax Arrears on Subdivided Land

Section 429.1

If there are tax arrears on a parcel of land that is to be subdivided, the municipality may distribute the tax arrears and any taxes that may be imposed on the newly created parcels.

Contaminated Land

Section 434.1

One area of concern for many municipalities is their potential liability should they acquire property under tax arrears and then find out that the property is contaminated.

Section 434.1 relieves a municipality of liability for such contamination provided that the municipality did not cause the contamination, that the municipality does not release any additional or new substance onto the parcel of land, or that the municipality does not aggravate the adverse effect of the contaminant that already exists on the parcel of land.

Should a contaminated tax arrears parcel be sold, the proceeds of the sale must first be applied to any remedial costs relating to the property. Remedial costs are defined as all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the *Environmental Protection and Enhancement Act* (section 410 of the MGA). Any remaining funds are available to satisfy the tax arrears and administrative costs specified in section 427(2).

Alternative Collection Options

Other Legal Claims

Section 411

A municipality may attempt collection of tax arrears through any other Act (e.g. civil claim) or common law right. Such action must occur before the municipality sells the parcel at public auction or before the parcel is disposed of under section 425.

Collection of Rent

Section 416

After a tax recovery notification has been placed on a title, a municipality may send a notice to any person holding a lease on a parcel of land to pay rent to the municipality instead of to the owner (section 416(1)). Any rent received must be applied to the taxes until the arrears have been paid. Once the arrears have been paid the municipality must request the Land Titles Office to remove the notification.

Not less than 14 days before asking a renter to pay rent to the municipality, the municipality must notify the owner of the municipality's intent (section 416). The municipality's only interest in the parcel at this time is to collect rent to pay the tax arrears.

Tax Agreement

Section 418(4)

A municipality may enter into an agreement with the landowner to provide for the payment of the taxes. The term of such an agreement cannot exceed three years.

Should the municipality choose to exercise this option, future taxes and penalties that will occur during the term of the agreement should be considered within the agreement.

A draft tax agreement form is included on pages 28 to 31.

Lease of Property

Section 425(2)

For the municipality to exercise this option it must first acquire title to the property under section 424. Once the municipality holds title, and should it enter into a lease agreement through which the municipality receives enough money to offset the tax arrears, the municipality must then return the title to the landowner. The landowner would be required to adhere to the conditions of the lease that was entered into by the municipality while the title was in its name.

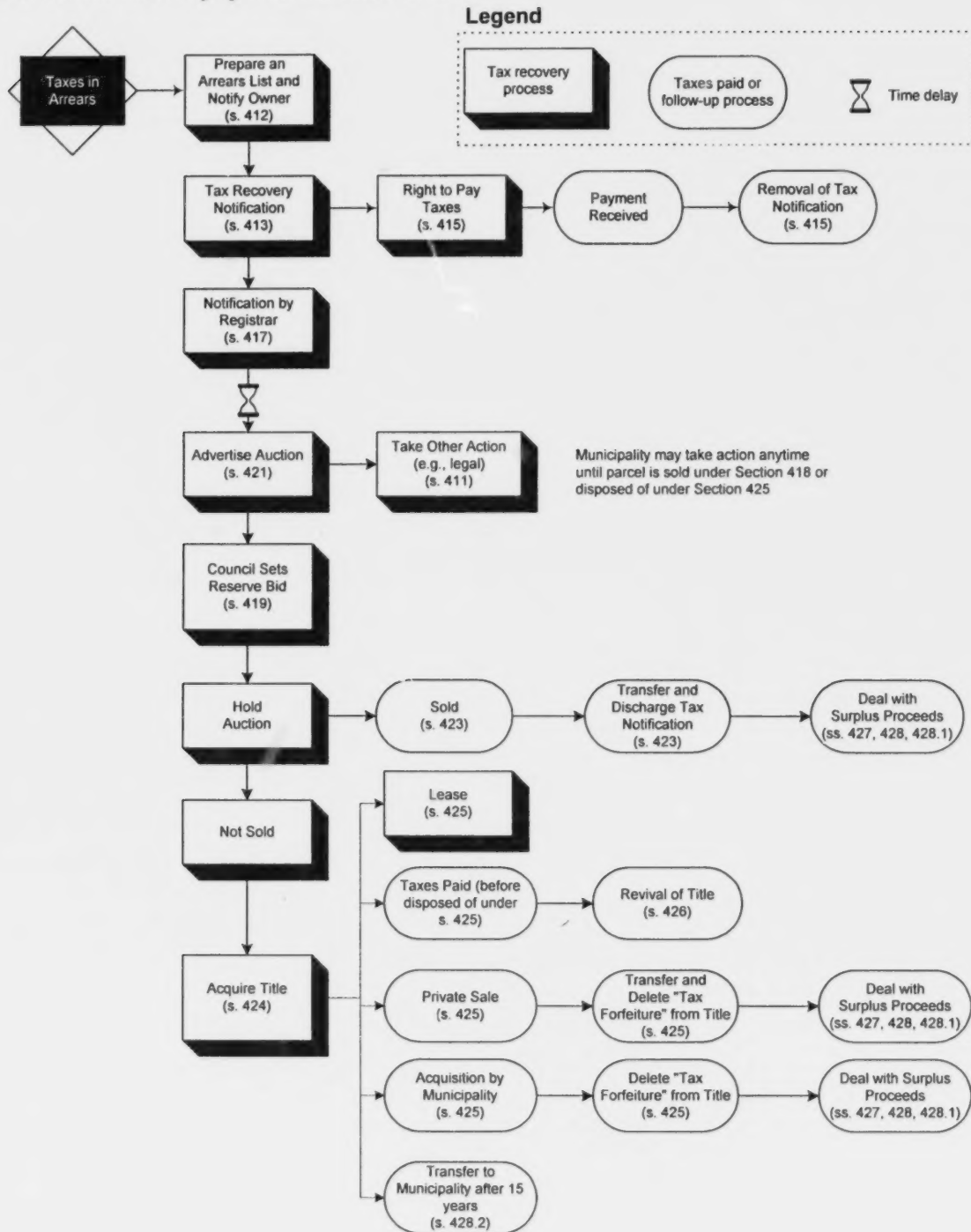
Unit 2.2: Flowchart and Checklist

Introduction

The following flowchart provides a visual outline of the various steps and requirements outlined in Division 8, Recovery of Taxes Related to Land.

The checklist highlights the main legislated requirements of Division 8 and provides a cross-reference to those sections.

Flowchart: Recovery of Taxes Related to Land



Municipal Checklist
Recovery of Taxes Related to Land
 _____ (legal land description)

MGA Section	Action	Date Completed	Person Completing Action
412	Prepare Tax Arrears list: ☐ Send 2 copies of list to the Registrar of Land Titles no later than March 31. ☐ Post 1 copy for public viewing. ☐ Notify the person liable to pay arrears that the property has been placed on the tax arrears list.		
413	☐ Registrar's endorsement of Duplicate Certificate of Title (DCT) for each parcel with a Tax Recovery Notification received. ☐ Costs for Registrar's endorsement can be added to applicable property.		
414	☐ With Tax Recovery Notification in place improvements on property for which taxes are imposed cannot be removed without municipal consent.		
415	☐ If tax arrears, penalties and costs are paid in full (anytime prior to public auction), remove tax recovery notification.		
416	☐ If parcel is rented at the time the tax notification is placed on the property the municipality may send a notice to the renter and owner directing that the rent be paid to the municipality. If municipality decides to exercise this option, the owner must be notified 14 days before the notice is sent to the renter.		
418	☐ If tax agreement, no public auction.		
418	The date set for Public Auction is _____. Remember, this date must be between April 1 st and the following March 31 st one year after placing property on tax arrears list.		
419	☐ Council must set Reserve Bid at market value. ☐ Council must set any terms and conditions that apply to sale of property.		Council Council
420	☐ Municipality is entitled to possession of parcel from the date of the public auction. ☐ Application may be made to courts if owner resists or follow-up through Residential Tenancies Act if renter resists.		
421	☐ Advertise public auction in Alberta Gazette not less than 40 days and not more than 90 days prior to date of auction. Gazette Publication Date: _____ ☐ Place in one issue of a local newspaper, not less than 10 days and not more than 20 days from the date of the public auction. Publication Date: _____		

Municipal Checklist
Recovery of Taxes Related to Land
 _____ (legal land description)

MGA Section	Action	Date Completed	Person Completing Action
421	Send a copy of the Gazette advertisement not less than four weeks before the date of the auction to: ☐ 1. owner/owners of the parcel ☐ 2. each person/organization with a registered interest (see DCT)		
422	☐ If a postponement of the auction is required or if the auction is cancelled due to taxes being paid, post the appropriate notice in a public place.		
423	☐ If a parcel is sold at public auction, and upon the purchaser meeting the conditions of the sale, transfer the title to the new owner by submitting the appropriate form to a Land Titles Office.		
424	☐ If parcel is not sold at public auction, municipality may, if it wishes, take title by forwarding request to a Land Titles Office to cancel existing Certificate of Title and issue new one in the name of the municipality.		
425	If municipality acquires title pursuant to section 424 it may sell property by: ☐ Selling parcel at price as close as reasonable to market value. Purchase price \$ _____ ☐ Municipality acquires fee simple title by paying amount required under section 425(1)(b). Purchase price \$ _____ ☐ Municipality may grant lease, licence or permit.		
426	After municipality acquires title under section 424 but before parcel is sold under section 425, should all tax arrears be paid, the municipality must request a Land Titles Office to revive the title of the previous owner.		
427	Money paid for property sold at or after the public auction, or paid through a lease, licence, or permit are to be deposited into a separate account designated solely for Division 8 tax recovery proceeds. Surplus funds are determined as follows: Revenue from sale, rent, lease \$ _____ Less: (in order of priority) Remedial costs relating to the parcel \$ _____ Tax arrears \$ _____ Lawful expenses of the Municipality \$ _____ Other costs or expenses (see section 553) \$ _____ 5% administration fee \$ _____ Balance: Tax Recovery Surplus \$ _____		

Municipal Checklist
Recovery of Taxes Related to Land
 _____ (legal land description)

MGA Section	Action	Date Completed	Person Completing Action
427	☐ If there are surplus proceeds following a sale, the municipality may pay the surplus to the previous owner (section 427(3.1)).		
427(3.2)	☐ If surplus funds are not paid out, the previous owner must be notified that he or she can make application to the Court of Queen's Bench to obtain the surplus funds.		
428.1	☐ If no application is made by previous landowner to the Courts for the surplus proceeds the municipality can, after a 10 year period, make use of the funds for any purpose.		
428.2	☐ If parcel has been offered for sale but not sold at public auction and has had a tax forfeiture registered against it, the municipality may request a title in the name of the municipality on the expiry of 15 years following the date of the public auction.		

Notes:

Alberta
REGISTRIES

MAIL TO: LAND TITLES OFFICE

TAX-1
FORM A

Municipal Government Act s. 412

Municipality:		Telephone Number:
Name:		
Address:		
Signature of authorized officer and seal	Date:	

[illegible]

Discharge Of Tax Recovery Notification

Municipal Government Act s. 413(4)

Insert registration number

A Tax Recovery Arrears List was registered at the Land Titles Office as number

Insert legal description of
land and, if available, LINC
number or title number

The Registrar of Land Titles is requested to remove the Tax Recovery Notification from
the certificate of title for the following land:

(LINC number: _____).

(title number: _____).

Name of Municipality

Date

Signature of authorized officer and seal

TAX-1
FORM B
TAX RECOVERY NOTICE
Municipal Government Act s. 417



A Tax Recovery Notification has been placed on the certificate of title for the following parcel(s) of land:

The land is located in

The Land Titles Office is required to place the Tax Recovery Notification on the certificate of title and to send this notice to you after receiving a Tax Recovery Arrears List. Land Titles Office personnel have no knowledge of the state of the taxes and cannot remove the Tax Recovery Notification from a certificate of title unless directed to do so by the municipality.

According to our records, the registered owner of the land is

You appear to be interested in the land as

If the tax arrears for the parcel of land are not paid before March 31 next year, the municipality will offer the parcel for sale at a public auction and the municipality may become owner of the parcel immediately after, if the parcel is not sold at the public auction. The arrears should be paid to the municipality at:

Please contact the municipality at the above address or phone _____ to obtain further information about the amount of taxes and costs that are outstanding. Note that improvements must not be removed from the land without the consent of the municipality.

Date

Registrar
Land Titles Office

Notification Of Sale By Public Auction

Municipal Government Act s. 423

Insert legal description of
land to be transferred

The legal description of the land is

Insert LINC number or title
number of land, if available

The LINC number is

The title number is

Insert name of person
receiving land and their
mailing address, including
postal code

The transferee receiving the land is

Complete only if there is more
than one transferee.
Complete by selecting the
appropriate box.
If b) is chosen, define the
proportionate interest of each
tenant, if desired

The land is to be held by the transferees as

a) ☐ joint tenants.

- OR -

b) ☐ tenants in common which will be held _____.

Provide full details of amount
paid by the transferee at
public auction

The consideration is

Under s. 423, the Registrar of Land Titles is requested to cancel the existing certificate of title for the land and issue a certificate of title in the name of the transferee.

Name of Municipality

Date

Signature of authorized officer and seal

? Have you attached the Affidavit of Value Form?

? Have you attached the appropriate foreign ownership of land declaration form (if necessary)?

Notification of Municipal Acquisition

Municipal Government Act s. 424

Insert legal description of
land to be transferred to
municipality

The legal description of the land is

Insert LINC number or title
number of land, if available

The LINC number is

The title number is

Insert name of municipality
receiving land and
municipality's mailing address,
including postal code

The municipality receiving the land is

Under s. 424, the Registrar of Land Titles is requested to cancel the existing certificate of title for the land and issue a certificate of title in the name of the municipality.

Date

Signature of authorized officer and seal

? Have you attached the Affidavit of Value Form?

Notification Of Revival Of Title

Municipal Government Act s. 426

The Registrar of Land Titles is directed to revive the certificate of title cancelled under section 424 of the Municipal Government Act for the following land:

Insert legal description of
land and, if available, LINC
number or title number

(LINC number: _____).

(title number: _____).

Name of Municipality

Date

Signature of authorized officer and seal

? Have you attached the Affidavit of Value Form?

FORM 32

LAND TITLES ACT
(Section 164)

AFFIDAVIT RE VALUE OF LAND

I, A.B., of _____
make oath and say:

1. I am (one of) the transferee(s) (or agent of the transferee(s)) named in the within or annexed transfer and I know the land therein described;

2. I know the circumstances of the transfer and true consideration paid by me is as follows:

(Give full details: cash, assumption of mortgage, exchange or other consideration with cash value of same.)

3. The current value* of the land**, in my opinion, is \$ _____

* "value" means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer

** "land" includes buildings and all other improvements affixed to the land.

SWORN before me at _____)
in the _____)
this _____ day of _____) _____
_____) (Signature)

AR 480/81 Form 32; AR 331/88;
AR 231/99; AR 251/2001 s18

Tax Agreement

Disclaimer: This Agreement is provided as an example of a tax agreement concerning tax recovery related to land. Municipalities wishing to enter into such a tax agreement are strongly encouraged to contact their lawyer with respect to the drafting of the particular agreement. The inclusion of this Agreement within this manual is in no way intended as an endorsement of the legality of this Agreement.

MEMORANDUM OF AGREEMENT made in duplicate this ____ day of _____, ____.

BETWEEN:

(hereinafter referred to as the "Landowner")

AND

(hereinafter referred to as the "Municipality")

WHEREAS the Landowner is the owner of the parcel legally described as

(hereinafter after referred to as the "Lands") and,

WHEREAS the Landowner acknowledges that the Lands are in tax arrears, as property taxes have not been paid since *(insert date)* and are subject to tax recovery proceedings; and,

WHEREAS, the Landowner wishes to enter into an agreement to provide for the timely payment of all tax arrears and any taxes that will be levied during the term of this Agreement; and,

WHEREAS, the Municipality is agreeable to entering into such an agreement, pursuant to section 418(4) of the *Municipal Government Act* (MGA);

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual terms, covenants, and conditions herein, the parties hereto agree as follows:

1. **TERM OF THIS AGREEMENT**

The term of this Agreement shall be from _____, ____ to _____, _____. *(Note: The term of the agreement can not exceed three years.)*

2. **METHOD OF PAYMENT**

- a) Payment shall be made as calculated within "Schedule A," hereto attached and forming part of this Agreement.
- b) Payment shall be received on the _____ day of each month beginning on the _____ day of _____, _____.

- c) The Landowner hereby acknowledges and agrees that if he fails to make payment in accordance with 2(a) above, unless prior written waiver is provided by the Municipality, during the term of this Agreement, this Agreement shall be null and void, and the Municipality shall be entitled to proceed with tax recovery actions in accordance with the MGA.
- d) Should the Landowner sell the lands at any time during the term of this Agreement, all tax arrears, penalties, and costs to which the Municipality is entitled under Division 8 of Part 10 of the MGA shall immediately become due and payable.

3. MUNICIPAL RESPONSIBILITIES

- a) The Municipality agrees that it shall not pursue tax recovery proceedings relating to the property while this Agreement is in effect.
- b) The Municipality further agrees that upon full payment of all arrears the tax recovery notification shall be removed within thirty (30) days of funds being deposited with the Municipality.

4. GENERAL

- a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and, except as hereinafter may otherwise be provided, upon their executors, administrators, successors and assigns, if any.
- b) This Agreement shall be interpreted and governed in accordance with the laws of the Province of Alberta and the forum for all disputes arising from this Agreement shall be the Courts of the Province of Alberta.
- c) All terms, conditions and covenants within this Agreement shall be severable. Should any term, condition, or covenant herein be declared invalid or unenforceable by any court having the jurisdiction to do so, the remaining terms, conditions and covenants of this Agreement shall not be thereby affected and shall remain in full force and effect.
- d) The landowner must keep the current year taxes in good standing.

5. TERMINATION

This Agreement shall come to an end:

- a) if the Landowner fails to make a payment contemplated by the Agreement on the date it is required;
- b) if the Landowner files for, or is placed in, bankruptcy; or
- c) some other party takes legal proceedings in respect of the Property.

Upon termination the full amount of the outstanding taxes (including interest) is immediately payable to the Municipality.

6. REPRESENTATIVES

For the purposes of this Agreement, the following named individuals are the representatives of the parties to this Agreement and are hereby enabled to perform all obligations of the parties to this Agreement as contained within this Agreement:

For the Landowner:

For the Municipality

(Name)

(Name)

(Address)

(Address)

(Municipality)

(Municipality)

(Phone)

(Phone)

7. SIGNATURE

Witness

Witness

Landowner

Municipality

Schedule A

1. Description of Property

Tax Arrears Payment Calculations for

(Legal description of property)

2. Payment Calculation

Current Tax Arrears & Penalties \$

Anticipated Taxes Levied

- Property \$ _____
- Business _____
- Other (e.g. penalty) \$ _____

Total Tax \$_____

3. Payment Schedule

Payment shall begin on the _____ day of _____ and shall be made:
weekly ☐ monthly ☐ quarterly ☐ other ☐ thereafter.

4. Payment Calculation

Total Tax \$ _____ divided by _____ = \$ _____
(# of payments) (payment amount)

Letter - Early Notice (Optional)

[Date]

[[Name]
[Address]

Dear [Name]

This letter is to inform you that your property taxes for the XXXX year are now two years in arrears. If payment in the amount of \$XXX is not received by March 31 we will, under the *Municipal Government Act*, be required to start tax recovery proceedings. The end result of this process may be the sale of your property. This is a result that I believe we both wish to avoid. Please contact this office at (XXX) XXX-XXX to discuss this matter further or to make arrangements for the payment of the outstanding taxes.

Thank you.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Letter – Notification of Public Auction

[Date]

[Name]

[Address]

Dear [Name]:

Enclosed is a copy of the advertisement relating to the public auction of your property.

Please be aware that unless payment in the amount of \$XXX is received prior to the public auction the auction will proceed and the parcel may be sold. If your parcel does not sell, the municipality will have the option of taking title.

If you have any questions regarding the public auction or with respect to payment options please contact me at (XXX) XXX-XXXX.

Sincerely,

John Doe

Title (e.g., Chief Administrative Officer)

Municipality of Anywhere

Public Auction Guidelines

The following are guidelines for conducting a public auction:

- Declare the public auction open.
- Advise the audience of the auction procedures - how the auction will be conducted.
- Repeat the terms and conditions as outlined in the advertisement; for example, full payment, partial payments (percent down with remainder over a prescribed period, etc).
- Announce that you will be reading, only once, the description of each property that is being offered for sale, and, if there are no bids, you will automatically go on to announce the next property up for bid. Bidders will not be able to go back and bid on a property that has closed (which is after subsequent properties have been put up for auction). The order of properties being auctioned will follow the order presented in the advertisement.
- Announce that bidders will be notified of the reserve bid for each property at the time it is put up for auction.
- Remind bidders that if there are any questions, they should ask them now, or they may question specifics of a particular property at the time the property is offered.
- Let potential bidders know that after all properties have been announced, the auction will be concluded for that property. There will not be an opportunity to bid after that time.
- Notify successful bidders that payment for properties will be received after bidding has been concluded for all properties.
- If there is a question and you do not know the answer, delay the auction until you are able to obtain and give an answer. You can adjourn the auction to any date within 2 months after the advertised date.
- If you have hired a private auctioneer, it is advisable to have a municipal representative present at the auction to verify that the proper processes and procedures have been followed. This is important so that the council is not put in an awkward position by dissatisfied bidders following the auction.
- Minutes and/or a report of the auction should be kept and the information included in a report to council (for example, properties offered, properties receiving bids and information on the successful bidders for each property).

Unit 3:

***Recovery of Taxes
Related to Designated
Manufactured Homes***

UNIT 3: RECOVERY OF TAXES RELATED TO DESIGNATED MANUFACTURED HOMES

Unit 3.1: Overview Part 10, Division 8.1

The Purpose of Part 10, Division 8.1

Division 8.1 came into effect January 1, 1999. This Division provides for the collection of tax arrears associated with designated manufactured homes – specifically, manufactured homes, mobile homes, modular homes and travel trailers – and uses the Personal Property Registry to enforce collection of property taxes levied against mobile property.

Please note that Division 8.1 only relates to designated manufactured homes that are assessed under section 304(1)(j)(i) or (k) of the *Municipal Government Act* (MGA). This Division does not apply to other designated manufactured homes that are affixed to and considered improvements to land.

When are Taxes in Arrears?

It is important to understand when designated manufactured homes with outstanding taxes are to be placed on the tax arrears list. Therefore, before looking at the Division 8.1 tax recovery process, let us consider when taxes are in arrears for a designated manufactured home.

The MGA identifies outstanding taxes in two different ways - taxes that are “unpaid” and taxes that are in “arrears.” It is important to understand the difference between these terms so that a designated manufactured home is not mistakenly placed on the tax arrears list. Section 326 and section 332 are important sections in understanding this issue.

Section 326(c) of the MGA defines “tax arrears” as “taxes that remain unpaid after December 31 of the year in which they are imposed.” The key part of this definition is the phrase “that remain unpaid **after December 31** of the year in which they are imposed.” Many individuals confuse unpaid taxes, which may be subject to penalty under section 344 or, with taxes in arrears. Again, taxes are in arrears only if they are unpaid as of January 1 of the year following the year in which they are imposed.

Section 332 states that taxes imposed under Part 10, other than a supplementary property tax or a supplementary business tax, are deemed to have been imposed on January 1. Therefore, regardless of whether the tax notice is sent in May or October, the taxes are considered to be imposed as of January 1 and are therefore one year in arrears if they remain unpaid on January 1 of the following year.

For example, the Town of Wherever mails its tax notice on May 1, 2006. The taxes are due by June 30. On July 1 any outstanding taxes are considered “unpaid” and a tax penalty may be applied under section 344. If these taxes remain unpaid as of January 1, 2007, the taxes are then considered to be in arrears (section 326(c)).

With respect to tax recovery related to designated manufactured homes, section 436.03 directs municipalities regarding the preparation of the arrears list.

Municipalities should note that section 436.03 requires them to place designated manufactured homes with taxes in arrears of more than one year on the arrears list. Section 436.03 also authorizes municipalities to place designated manufactured homes with taxes in arrears for less than one year on the list.

For example, the Town of Wherever mails its tax notices on May 1, 2006, to the owner of a designated manufactured home. Any taxes that remain unpaid on that property on January 1, 2007, are considered in arrears. If those taxes remain unpaid in the year 2008, the municipality must include the designated manufactured home on its tax arrears list. However, given that section 436.03 allows a municipality to place designated manufactured homes with taxes less than one year in arrears on the tax arrears list, a municipality may include the designated manufactured home on the tax arrears list in the year 2007.

Should a municipality choose to exercise its option to list designated manufactured homes with taxes less than one year in arrears on the tax arrears list, the municipal council should adopt a policy directing its administration to undertake this action. The policy should address the circumstances under which the municipality will take this action. For instance, are the designated manufactured homes to be added to the tax list if the taxes are thirty days in arrears or six months in arrears? There is no "right" decision with respect to the policy direction council provides; however, it is important that administration be provided with specific direction with respect to this matter before the municipality pursues tax recovery under this section.

There is provision to pass a bylaw for compulsory tax installment payments for designated manufactured homes. See section 357(1.1). If the installments are not kept current, the provision to list homes for less than one year may improve collections.

It is important for municipalities to understand that the provisions of Part 10, Division 9 may also be used separately, or in conjunction with the provisions of Division 8.1, to aid in tax recovery on designated manufactured homes.

The Tax Recovery Process

Prepare an Arrears List

Section 436.03

The tax recovery process begins with the preparation of a tax arrears list.

Each year a municipality **must, not later than March 31**, prepare a list of all designated manufactured homes that are in arrears for more than one year. As noted above, municipalities must place designated manufactured homes on the tax arrears list where taxes are in arrears for more than one year and have the option of placing designated manufactured homes on the tax arrears list with taxes less than one year in arrears.

Four to six weeks before developing its tax arrears list, the municipality may wish to send a letter to the owner of each affected designated manufactured home advising that tax recovery proceedings against his or her designated manufactured home will be started unless the tax arrears are paid (sample shown on page 68). The letter should advise the owner that the municipality is required to register the arrears by March 31, and that the registration of the lien may be avoided by the payment of the outstanding taxes and penalties.

Once the tax arrears list (sample shown on page 54) is completed the municipality must post a copy of it in a place that is accessible to the general public during regular business hours, which is generally the municipal office.

Tax Recovery Lien

Section 436.03

The municipality must also register a tax recovery lien against each designated manufactured home shown on its tax arrears list. The tax recovery lien is registered by completing and submitting a Financing Statement to a registry agent or an Alberta Online Customer of the Personal Property Registry.

The Division 8.1 tax recovery process is dependent on the municipality having the correct serial number for the designated manufactured home. To confirm that the serial number the municipality has is correct, they may wish to check that number against the serial number located on the designated manufactured home. The serial number is generally found in the following locations:

For mobile homes built prior to 1980, the serial number is often located on the frame of the unit, usually on the metal cross member at the front of the home. If the serial number is not in this location it may also be indicated on the hitch of the home, on the right hand side of the entrance door, on the inside of one of the kitchen cabinet doors, or on the electrical panel.

For manufactured homes and modular homes constructed after 1980, the serial number is likely welded on the front cross member of the frame of the home as well as located on the electrical panel or the inside of the door covering the electrical panel.

The owner of a manufactured home community should also have the serial number, make, and model of the designated manufactured home. The owner is required to provide monthly reports regarding ownership and movement of all designated manufactured homes containing this information to the municipality (section 436.24).

It is the intent of this section to have the community owner report the ownership and serial number of those units which are to be placed in tax recovery or those that may have moved in or out of the community.

Another way that a municipality may be able to obtain the serial number is to require the serial number on the development application form, where required, when the designated manufactured home is moved into the municipality.

Municipalities are strongly encouraged to complete an electronic search through the Personal Property Registry using the name of the owner to see if the designated manufactured home has a unique identification number or description to determine and/or verify the serial number of the home. It may also be useful to search the Personal Property Registry by the serial number identified and any other identifiable numbers to ensure the designated manufactured home is not listed under a different owner.

If a serial number does not exist, the Modular Housing Association of Alberta and Saskatchewan may be able to provide a unique identification number for the designated manufactured home. The Modular Housing Association of Alberta and Saskatchewan, located in Edmonton, Alberta, may be contacted at (780) 429-1798. To request a new Manufactured Housing Identification Number (MHIN) the municipality will be required to complete the appropriate request form which is available from the Association. Also available from the Association is a fact sheet on locating serial numbers on older manufactured homes.

It is critical that the municipality uses the correct serial number throughout the Division 8.1 tax recovery process. If an incorrect serial number is used, the municipality may be unable to collect its taxes or it will have to begin the process all over again.

Registering the Tax Recovery Lien (Statutory Charge)

Alberta Online Customers or registry agents may not be familiar with the term "tax recovery lien." Within the Personal Property Registry, the term used is "statutory charge," which refers to a broader group of liens of which a tax recovery lien is only one.

Section 436.03(1)

To register the Tax Recovery Lien, the municipality must submit a Financing Statement, sample shown on page 55, to one of the registry agents throughout the province or to an Alberta Online Customer (e.g., a law firm).

Unless otherwise indicated, the following areas on the Financing Statement form must be completed.

Type of Registration

The type of registration to file is "Other."

Print or type the phrase "Statutory Charge (Designated manufactured home Tax Recovery Lien)" in this area of the form. The code is "SC."

Debtor #1

Identify whether the Debtor is a Business or Individual.

The Business or Last Name, the First Name, Middle Name, Street Address, City, Province, and Postal Code areas must all be completed. Include, if available, the birth date of the debtor.

Debtor #2

This area of the form is used if there are multiple owners of the designated manufactured home. Provide the same type of information as provided for Debtor #1.

Another reason to use the Debtor #2 area is if the debtor uses different names or aliases.

For instance, if the designated manufactured home owner is known as John (Butch) Smith, staff may wish to list John Smith as a Debtor as well as Butch Smith as a Debtor.

If the municipality needs to register the tax recovery lien against more than two debtors it will use the "Debtor/Secured Party Additions" form and submit it along with the Financing Statement.

Secured Party

Complete the "Business" area of the form, include the complete municipal name, municipal office street address, province, and postal code.

If a municipality frequently deals with the Personal Property Registry it may have been issued a "Secured Party Code." If so, the municipality should use it.

Collateral: Serial Number Goods

It is extremely important that municipalities use the correct serial number when completing this section. They must also include the make, year and model of the designated manufactured home. The category code they will use is "MF" for a manufactured home, a mobile home or a trailer.

Collateral: General

Do not complete this section.

Registering Party

This section is to be used only if the Registering Party is different than the Secured Party. For example, if the municipality's lawyers are completing the registration, they would be listed as the Registering Party.

Authorized Signature

Type or print the name of the registering party, the phone number and sign the appropriate area of the form. If the municipality assigns file numbers to its tax recovery files, it can include this number under the "Your Reference #." If other forms such as a "Financing Change Statement," sample shown on page 56, or "Debtor/Secured Party Additions," shown on page 58, are included, complete the "Page Of" section so that the Registering Party (being an Alberta Online customer or registry agent) knows that there are other documents associated with the Financing Statement form. The "Court Order, Other Changes and Additional Information" form, shown on page 60, should also be submitted along with the Financing Statement. The "Additional Information" area of that form should be completed to state the type of statutory charge and specify the Act that authorizes the charge. For example, the area should state "Manufactured Home Tax Recovery Lien - Part 10 of the *Municipal Government Act*." Division 8.1.

Avoid Duplication

Section 436.03 (2) and (3)

There is no need for a municipality to register a subsequent tax recovery lien against a designated manufactured home if a tax recovery lien already exists. If two tax recovery liens are registered against a designated manufactured home, the courts may find that the second lien has no effect.

If a tax recovery lien has been registered previously and the municipality in whose favour the lien is registered wishes to change any information, the municipality may do so by completing a Financing Change Statement (page 56).

The Financing Change Statement is completed as follows:

Fill out all areas in the "Identification of Original Registration and Amendments." This information will be available from the original Financing Statement or the Verification Statement, a sample form shown on pages 61 to 63. Municipalities should include a "Court Order, Other Changes and Additional Information" form (page 60). The "Additional Information" area of that form should be completed listing the amount of the subsequent tax arrears and the year for which the additional taxes are due.

By amending the tax recovery lien in this manner the municipality retains its priority in terms of registration and also ensures that the additional tax arrears are registered against the designated manufactured home.

Information may also be amended or corrected by using a Financing Change Statement form. For example, if the year of the designated manufactured home was listed incorrectly, a Financing Change Statement is used to correct this information.

Notification by Municipality

Section 436.03 (4) and (5)

The municipality must give written notice to the owner of each designated manufactured home shown on the tax arrears list that a tax recovery lien has been registered against the designated manufactured home (see page 69). The municipality must also give written notice to the owner of each manufactured home community where the designated manufactured home is located advising that a tax recovery lien has been registered against the designated manufactured home.

An electronic search of the Personal Property Registry must be completed at this time to ensure that the proper addresses for all registered parties are obtained. These searches are done through a registry agent or an Alberta Online Customer's office. Municipalities must ensure that the record of this and any other searches are retained.

Removal of Designated Manufactured Home or Improvements

Section 436.05

Once the tax recovery lien is registered against the designated manufactured home, no person is allowed to remove the designated manufactured home, or any other improvement, from the site without the permission of the municipality.

Right to Pay Taxes

Section 436.06

After a tax recovery lien has been registered against a designated manufactured home, any person can pay the tax arrears owing against that home.

When the municipality receives payment of the tax arrears, the municipality must discharge the tax recovery lien. Again, this discharge can be done either through a "Financing Change Statement" or by using the discharge form on the bottom of the "Verification Statement" that the municipality, or its agent, received when the Tax Recovery Lien was registered. The form is then submitted to any registry agent office or Alberta Online Customer throughout the Province.

Do not discharge a tax recovery lien until the arrears and penalties are paid in full (e.g., the cheque clears the bank). Remember, after a lien is removed, it is not possible to have it reinstated without starting the tax recovery process from the beginning.

Section 436.08(1)

Once the Tax Recovery Lien has been registered with the Personal Property Registry the **municipality** must, not later than August 1, send a notice to the owner of the designated manufactured home, the owner of the manufactured home community where the designated manufactured home is located, and to each person who has a security interest or any other interest registered against the designated manufactured home. These interests can be discovered by doing an electronic search through Personal Property Registry using the serial number of the designated manufactured home. Again, this search is done through a registry agent or Alberta Online Customer.

It is suggested that this notification be sent immediately following the registration of the tax recovery lien. Should the notification be sent out later the results from the search of the Personal Property Registry may not be reliable, as another registration may have occurred during the delay.

The notice must state that if the tax arrears are not paid by March 31 of the following year, the municipality will offer the designated manufactured home for sale at public auction.

Offer of Designated Manufactured Home for Sale

Section 436.09

Unless an agreement for the payment of tax arrears is reached between the municipality and the homeowner, the municipality **must** offer for sale at a public auction any designated manufactured home shown on its tax arrears list. The public auction must be held following the period referred to in the notice sent pursuant to section 436.08 and ending on March 31 of the year immediately following that date.

Advertising the Auction

Section 436.12

The municipality must advertise the public auction by placing an advertisement in a local paper not less than 10 days and not more than 30 days before the auction. The information in the advertisement must specify the date, time, and location of the auction and a description of each designated manufactured home to be offered for sale. The advertisement must also include any conditions of the sale (e.g., cash only, percentage down, or payment by a specified date) as set by council (see section 436.1).

These advertising processes are mandatory. If these standards are not met the auction results can be nullified.

Contacting the Owner and Interested Parties Before the Auction

Section 436.12(3) states that not less than four weeks before the date of the public auction, the municipality must send a copy of the newspaper advertisement to the owner of the designated manufactured home, the owner of the manufactured home community and to each person who has a security interest or any other interest registered against the designated manufactured home as disclosed by doing a search of the Personal Property Registry using the serial number of the designated manufactured home (see sample of letter on page 70).

It is strongly suggested that municipalities complete another search of the Personal Property Registry at this time to ensure that no other registrations have occurred since the previous year.

Setting a Reserve Bid and Sale Conditions

Section 436.1

Council must establish a reserve selling price before the designated manufactured home can be auctioned. The reserve bid should be set at a level that protects the owner's interests as well as the municipality's, and must be set at market value. The municipality's assessor or an independent appraiser can provide Council with a written report that establishes market value.

Remember, the reserve bid must be set at market value and not just at the amount that is owed to the municipality (taxes and costs). Council must also set any conditions applying to the sale.

For example, Council may require full payment by cash or certified cheque or Council may allow partial payment at the time of auction with full payment required within 30 or 60 days.

Adjourning the Auction

Section 436.13

A municipality may adjourn a public auction to any date within two months after the advertised sale date (section 436.13). It is not required to advertise the adjournment, but the municipality must post a notice, in an accessible public place, of the new date and place when the auction will be held and send a notice to the parties. There are no restrictions for approving the adjournment of an auction.

Adjournments can be used to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met.

For example, if the municipality failed to place the advertisement in a local newspaper within the 10-to-30 day period preceding the auction, the municipality can postpone the auction to meet this condition.

Sometimes tax arrears are paid just hours or days prior to the public auction. In such cases, it is recommended that the auction be adjourned rather than cancelled, to allow for the cheque to clear the bank. Municipalities should remember that if the public auction is cancelled, and the cheque does not clear the bank, the tax recovery process will have to begin all over.

Holding the Auction

The municipality must select the person to conduct the auction. It can choose a professional auctioneer, but in most cases the designated officer acts as the auctioneer. Guidelines for conducting the auction process are provided on page 71.

Once the auctioneer declares a designated manufactured home sold, the sale is final and no further approval is required. The previous owner has no further right to pay the tax arrears.

Section 436.21 restricts the auctioneer, councillors, the Chief Administrative Officer, and the employees of the municipality from bidding on, or acting as an agent in buying the designated manufactured home. However, a designated officer or employee can be directed to bid for or buy a designated manufactured home for the municipality if it wishes to become the owner of the designated manufactured home.

The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council with information in case a sale is protested.

If no offer is received on a designated manufactured home or if the reserve bid is not met, the designated manufactured home cannot be sold at the auction.

Municipal Responsibilities/Rights Following the Auction

Section 436.15

A municipality can dispose of a designated manufactured home not sold at the public auction at any time following the auction. However, it must follow the steps as outlined below in disposing of the designated manufactured home and in retaining and paying out any proceeds generated from selling the designated manufactured home.

Municipality's Rights to Possession Following the Public Auction

Section 436.11

The municipality is entitled to possession of the designated manufactured home from the date on which the designated manufactured home is offered for sale at a public auction. If a designated manufactured home is occupied and the municipality encounters resistance, the municipality may apply to the Court of Queen's Bench for an order for possession.

In the case of a designated manufactured home being rented out by the previous owner, the municipality must follow the processes for possession outlined in the *Residential Tenancies Act*.

Municipal Rights and Responsibilities for Designated Manufactured Homes Not Sold at the Public Auction

Section 436.15

When disposing of an unsold designated manufactured home, the municipality is obligated to protect the designated manufactured home owner's interests. The municipality accomplishes this by selling the designated manufactured home at a price as close as reasonably possible to the market value. Options regarding this sale include direct sale, sale by tender, sale through a real estate agreement; or by any other means that support selling the designated manufactured home at market value.

A municipality has three options with respect to the disposal of the designated manufactured home should it not sell at public auction.

First, it can sell the designated manufactured home at a price as close as reasonably possible to the market value previously established. If the municipality exercises this option, transfer of the designated manufactured home is accomplished by issuing a bill of sale under the name of the municipality to the purchasing party. The municipality must ensure that the bill of sale reflects that the sale is in relation to tax recovery proceedings. On selling the designated manufactured home, the municipality must discharge the tax recovery lien using a Financing Change Statement. It must also amend or discharge any

security interest in, or lien, writ, charge or other encumbrance against the designated manufactured home that exists as of the date of the sale (see section 436.14(2)).

If a designated manufactured home is sold, the municipality should advise the purchaser that it is his or her responsibility to deal with the community owner regarding site rental if they wish to leave the home in the community.

Second, the municipality can purchase the home itself by depositing in its tax sale account an amount equal to the amount at which it would be prepared to sell the designated manufactured home to a private individual.

The third option is to lease the designated manufactured home. If the municipality exercises this option it must ensure that the lease agreement includes a thirty (30) day cancellation condition given the provisions of section 436.16.

Municipal Responsibilities on Designated Manufactured Homes Sold at the Public Auction

Section 436.14

Anyone purchasing a designated manufactured home at a public auction acquires the designated manufactured home free of all encumbrances except claims arising of the Crown in right of Canada.

After the sale of a designated manufactured home at a public auction or sale under section 436.15, the municipality must complete and submit through a registry agent office or Alberta Online Customer office a Financing Change Statement to amend or discharge the tax recovery lien. It must also amend or discharge any security interest in or lien, writ, charge or other encumbrance against the designated manufactured home that exists as of the date of the sale.

Return of Designated Manufactured Home

Section 436.16

If tax arrears for the designated manufactured home are paid before the municipality sells the designated manufactured home under section 436.15(a), or while leasing the designated manufactured home, the municipality must return the designated manufactured home to its owner.

Before returning the designated manufactured home to the owner, the municipality must send a written notice to the owner of the designated manufactured home, to the owner of the manufactured home community where the designated manufactured home is located, and to each person who has an interest registered against the designated manufactured home as registered in the Personal Property Registry. If the municipality leased the designated manufactured home, the municipality must also send a notice to the person who leased the designated manufactured home.

Municipalities must ensure that this notification occurs as it allows the notified parties an opportunity to ensure that their secured interests, writs, etc., are still in place, or to reinstate those interests if the situation requires.

The notice must state that the designated manufactured home will be returned to the owner after 30 days from the date of the notice. If a lease was entered into, the lease will expire 30 days after the date of the notice.

Ensure that any lease the municipality enters into concerning designated manufactured homes includes a 30-day termination clause. The lease provisions of section 436.16 override the relevant sections of the *Residential Tenancies Act*. Any lease beyond that 30 day notification period will be null and void.

Selling Occupied Designated Manufactured Homes

Sometimes a sale of a designated manufactured home cannot be completed, or is conditional on the previous owner or a renter being removed from the designated manufactured home. If the municipality encounters resistance from the designated manufactured home owner when they attempt to take possession, the municipality may apply to the Court of Queen's Bench for an order for possession (section 436.11).

If there is a renter in the designated manufactured home, the municipality will have to follow the processes for possession outlined in the *Residential Tenancies Act*.

Proceeds from Sales and Leases

Sections 436.17 and 436.18

All funds generated from the public auction, a private sale, leases or other forms of revenues from a designated manufactured home must first be deposited into a separate account established solely for Division 8.1 tax recovery revenues.

The municipality must pay, in order of priority, the tax arrears, any lawful expenses related to the tax recovery process, and an administration fee of 5 percent of the sale amount.

If any funds from the public auction or sale remain, the municipality must notify the previous owner that there is money remaining. If the municipality is satisfied after a search of the Personal Property Registry using the serial number of the designated manufactured home that there are no security interests, liens, writs or other encumbrances against the designated manufactured home, the municipality may pay the money remaining to the previous owner.

If the municipality is not satisfied after a search of the Personal Property Registry using the serial number of the designated manufactured home that there are no debts secured against the designated manufactured home, it must notify the previous owner that an application may be made to the Court of Queen's Bench to recover all or a part of the proceeds.

Under section 436.18, the former owner or other interested party will have five (5) years after the date of the public auction or the date of sale to make an application to the courts to be paid any surplus sale proceeds. If no application is made within the five-year period, the municipality may use the money for its own purposes (section 436.19).

Transfer to the Municipality After 10 years

Section 436.2

If a designated manufactured home has not been sold ten (10) years after the date of the auction, the municipality becomes the owner of the designated manufactured home free of all security interests, writs or other encumbrances, except encumbrances arising from claims of the Crown in Right of Canada. To accomplish this, the municipality needs to discharge the registrations.

Should the municipality obtain ownership in this manner, the provisions of sections 436.16, 436.17 and 436.18 do not apply.

Designated Manufactured Home Moved to Another Municipality

Section 436.22

If the designated manufactured home is moved to, or its site becomes part of, another municipality, the other municipality must continue the tax recovery proceedings. The designated officer of the receiving municipality should ensure that a Financing Change Statement is registered to list the new municipality as the Secured Party.

The receiving municipality must pay to the municipality that started the tax recovery proceedings, to the extent that the second municipality receives money to do so, the costs incurred by the original municipality in connection with the tax recovery proceedings.

Alternative Collection Options

Collection of Rent

Section 436.07

After a tax recovery lien has been registered against a designated manufactured home, the municipality may send a notice to any person who rents or leases the designated manufactured home directing them to pay the rent for the designated manufactured home only to the municipality, instead of to the owner of the designated manufactured home. The rent for the designated manufactured home must be applied to the outstanding taxes until the arrears have been paid. Once the arrears have been paid, the municipality must then direct the tenant to forward payment to the designated manufactured home owner.

At least 14 days before asking a renter to pay rent to the municipality, the municipality must notify the owner of its intention to collect the rent. The municipality must also send a copy of the notification to the owner of the designated manufactured home community.

The municipality's only interest in the designated manufactured home at this time is to collect rent to pay the tax arrears.

Tax Agreement

Section 436.09

A municipality may enter into an agreement with the owner of the designated manufactured home to provide for the payment of the taxes. It is suggested that when drafting such an agreement, the municipality should also consider any penalties and taxes that may accrue during the term of the agreement.

A draft tax agreement form is included on pages 64 to 66.

Lease of Designated Manufactured Home

Section 436.15

If a designated manufactured home is not sold at a public auction, the municipality may grant a lease in respect of it.

Should the lease payment pay off the tax arrears, the designated manufactured home is to be returned to the previous owner and the lease will be considered null and void after 30 days (section 436.16(3)).

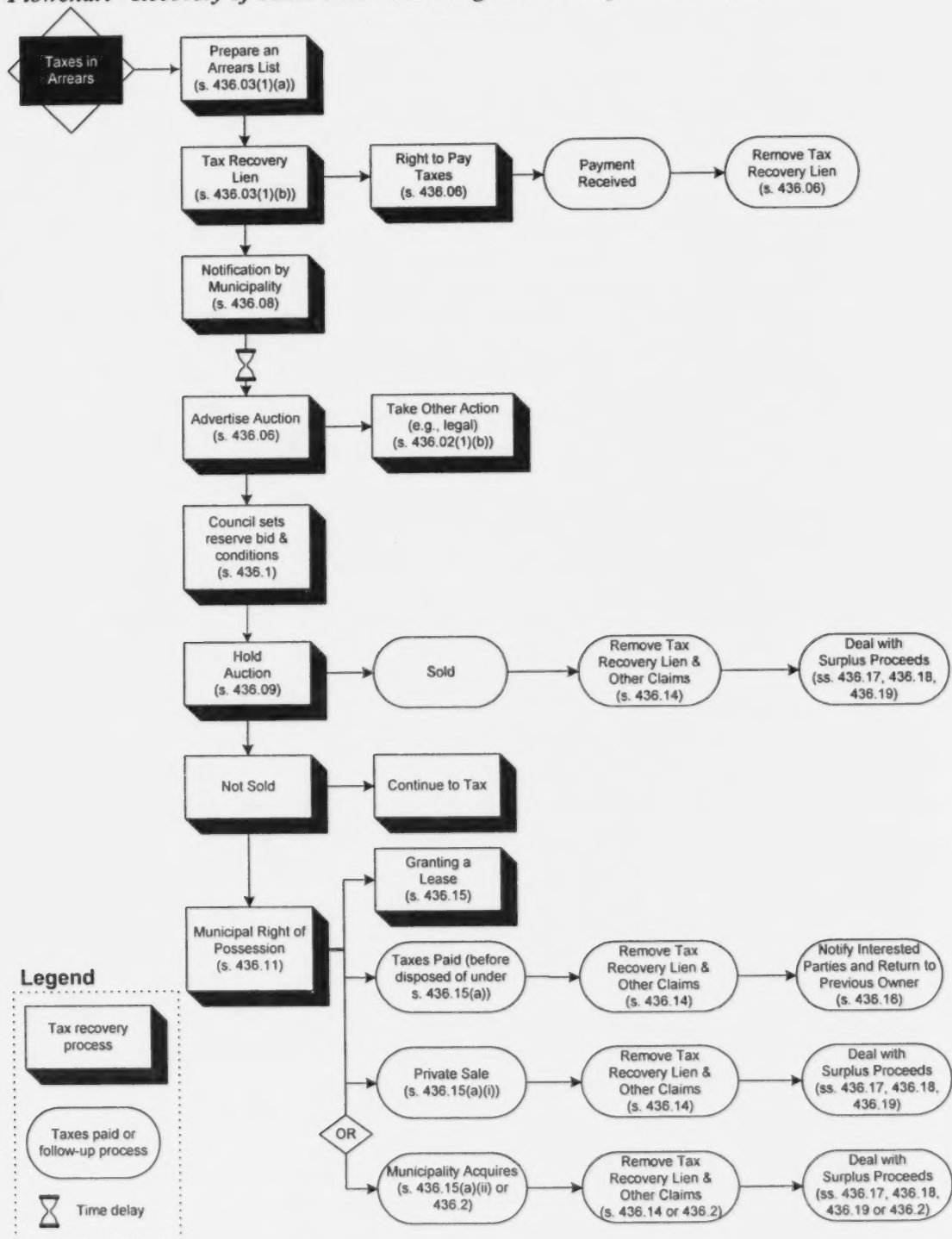
Unit 3.2: Flowchart and Checklist

Introduction

The following flowchart provides a visual outline of the various steps and requirements outlined in Division 8.1, Recovery of Taxes Related to Designated Manufactured Homes.

The checklist highlights the main legislated requirements of Division 8.1 and provides a cross-reference to those sections.

Flowchart - Recovery of Taxes Related to Designated Manufactured Homes



Municipal Checklist
Recovery of Taxes Related to Designated Manufactured Homes (DMH)

MGA Section	Action	Date Completed	Person Completing Action
436.03	Prepare Tax Arrears list: Date: _____ (ensure date is prior to March 31). ☐ Post one copy for public viewing. ☐ The serial number has to be obtained to register the Tax Recovery Lien on the Personal Property Registry. ☐ Notify the owner that a tax recovery lien has been registered against the DMH. ☐ Notify the owner of the manufactured home community that a tax recovery lien has been registered against a DMH.		
436.05	☐ With Tax Recovery Lien in place the DMH and improvements on the site cannot be removed without municipal consent.		
436.06	☐ If the tax arrears, penalties and costs are paid in full (any time prior to public auction), discharge the tax recovery lien.		
436.07	☐ If the DMH is rented at the time the tax recovery lien is registered against the DMH, the municipality may send a notice to the renter and owner directing that the rent be paid to the municipality. If the municipality exercises this option, the owner of the DMH and the manufactured home community must be notified at least 14 days before the notice is sent to the renter.		
436.08	Not later than August 1, send a written notice advising that unless the tax arrears are paid by March 31, the municipality will offer the DMH for sale at the public auction. Notice sent to: ☐ owner of the DMH. ☐ owner of the manufactured home community. ☐ each person with registration against the DMH.		
436.09	The date set for Public Auction is _____. Remember, this date must be between April 1 st and March 31 st in the year following when the DMH was placed on the tax arrears list.		
436.1	☐ Council must set the reserve bid at market value. ☐ Council must set any conditions that apply to the sale of the designated manufactured home.		Council Council
436.11	☐ The municipality is entitled to possession of the DMH from the date of the public auction. ☐ Application may be made to the courts if owner or renter resists.		
436.12	☐ Place a notice of the public auction in one issue of a local newspaper, not less than 10 days and not more than 30 days before the date of the public auction. Publication Date: _____ Send a copy of the advertisement not less than four weeks before the date of the auction to:		

Municipal Checklist
Recovery of Taxes Related to Designated Manufactured Homes (DMH)

MGA Section	Action	Date Completed	Person Completing Action
436.12	☐ 1. owner/owners of the DMH. ☐ 2. manufactured home community owner. ☐ 3. each person/organization with a registration against the DMH.		
436.13	☐ If a postponement of the auction is required, or if the auction is cancelled as the taxes are paid, post the appropriate notice in a public place and send notice to all parties.		
436.14	If the DMH is sold at a public auction, and the purchaser meets the conditions of the sale, transfer the ownership to the purchaser by: ☐ issuing a bill of sale, and ☐ discharge the tax recovery lien and discharge or amend other claims by completing and registering a Financing Change Statement.		
436.15	If the DMH does not sell at public auction, the municipality may: ☐ sell the DMH at a price as close as reasonable to market value. Sale price \$ _____ ☐ purchase the DMH at a price as close as reasonable to market value. Purchase price \$ _____ ☐ grant a lease. Date of lease: _____ Lessor's Name: _____		
436.16	If all tax arrears are paid before the municipality disposes of the DMH, or while a lease is in place, the DMH must be returned to the previous owner. Written notice of this action must be sent to: ☐ 1. owner of the DMH. ☐ 2. owner of the manufactured home community. ☐ 3. each person with registration against the DMH. ☐ 4. the person leasing the DMH (if applicable).		
436.17	Money paid for property sold at the public auction, sold after the public auction, or paid through a lease is to be deposited into a separate account designated solely for Division 8.1 tax recovery proceeds. Surplus funds are determined as follows: Revenue from the sale and/or lease \$ _____ Less: (in order of priority) Tax arrears \$ _____ Lawful expenses of the Municipality re: DMH \$ _____ 5% administration fee \$ _____ Balance: Tax Recovery Surplus \$ _____		

Municipal Checklist
Recovery of Taxes Related to Designated Manufactured Homes (DMH)

MGA Section	Action	Date Completed	Person Completing Action
436.17	☐ If there are surplus proceeds following a sale, the municipality must notify the previous owner and may pay the surplus to the previous owner (section 436.17(5)).		
436.18	☐ If surplus funds are not paid out, the previous owner must be notified that he or she may apply to the Court of Queen's Bench to obtain the surplus funds within 5 years after the date of the public auction or date of sale.		
436.19	☐ If the previous DMH owner does not apply to the Courts within a five (5) year period after the date of public auction or sale, the municipality can use the surplus funds for any purpose		
436.2	If the DMH has been offered for sale but is not sold at public auction and the municipality has not disposed of it by private sale, the municipality becomes owner of the DMH after 10 years by completing a Financing Change Statement to amend or discharge the tax recovery lien. The municipality should discharge the tax recovery lien.		
436.22	If the DMH is moved to another municipality, the new municipality must continue with tax recovery proceedings. Records forwarded Date: _____ Recovery costs paid on: _____ Amount \$ _____		

Notes:

Unit 3.3: Forms, Letters, and Guidelines

Arrears List

Designated Manufactured Homes Tax Recovery Arrears List

To be posted no later than March 31

Municipal Government Act s. 436.03

Municipality:		Telephone Number:	
Street:	City:	Prov:	Postal Code:
P.O. Box (if applicable):		Reference #:	
Signature of authorized officer and seal:		Date:	

The descriptive information is not required if the make, model and serial number is provided.

Serial Number	Year	Make	Model	Location of Manufactured Home Community



GOVERNMENT SERVICES

Personal Property Registry

Financing Statement

Type of Registration (Select one only)

SA ☐ PPSA Security Agreement

1. What is the term of Registration? ☐ _____ or ☐ Infinity
1 - 25 years

2. Does it cover Trust Indenture? ☐ Yes ☐ No

SG ☐ Sale of Goods Act s. 26(2) or Factors Act s.9(2)

1. What is the term of Registration? ☐ _____ or ☐ Infinity
1 - 25 years

CO ☐ Court Order

MP ☐ Matrimonial Property Order

SC ☐ Statutory Charge

CR ☐ Crown Charge

LC ☐ Land Charge

RR ☐ Railway Rolling

OT ☐ Other _____
Specify type

Debtor One

Select one ☐ Business ☐ Individual

Business Name or Last Name

First Name

Middle Name

Birthdate (if known)
dd/mm/yy

Street Address

City

Province

Postal Code

Debtor Two

Select one ☐ Business ☐ Individual

Business Name or Last Name

First Name

Middle Name

Birthdate (if known)
dd/mm/yy

Street Address

City

Province

Postal Code

Secured Party

Select one ☐ Business ☐ Individual

Secured Party Code Business Name or Last Name

First Name

Middle Name

Street Address

City

Province

Postal Code

Collateral - Serial Number Goods (If PPSA, applicable only to consumer goods or equipment)

Serial Number

Year (yyyy)

Make and Model

Category

1 _____

2 _____

General Collateral

1 _____

2 _____

Your Reference Number

Authorized Signature

Name of Person Authorized to Complete this Form (PRINT) Telephone number

Call Box Number

Financing Change Statement

Latest Registration Number

Identification of Registration or Amendments

Current Debtor

Business Name or Last Name

First Name

Middle Name

Current Secured Party

Business Name or Last Name

First Name

Middle Name

Place an (X) in the appropriate box

- ☐ **Renewal** - For PPSA, Sale of Goods and Factors Act please give the following: ☐ 1 - 25 years or ☐ Infinity
- ☐ **Change** - Deletions/Additions
- ☐ **Total Discharge** - permanently remove **ALL** record of registration(s).

Deletions

Debtor

Block Number Business Name or Last Name

First Name

Middle Name

Secured Party

Block Number Business Name or Last Name

First Name

Middle Name

Collateral: Serial Number Goods

Block Number Serial Number

Year (yyyy)

Make and Model

NOTE: To DELETE other collateral, complete and attach form:

- Form 8 Collateral Deletions.

Additions

Debtor

Select one

☐

Business

☐

Individual

Business Name or Last Name

First Name

Middle Name

Birthdate (if known)
dd/mm/yy

Street Address

City

Province

Postal Code

Secured Party

Select one

☐

Business

☐

Individual

Secured Party Code Business Name or Last Name

First Name

Middle Name

Street Address

City

Province

Postal Code

Collateral: Serial Number Goods (if PPSA, applicable only to consumer goods or equipment)

Serial Number

Year (yyyy)

Make and Model

Category

NOTE: To ADD other collateral, complete and attach:

- Form 3 Serial Number Goods Additions, and/or,
- Form 4 General Collateral Additions.

Your Reference Number

Authorized Signature

Name of Person Authorized to Complete this Form (PRINT)

Telephone number

Call Box Number

Debtor/Secured Party Additions

Debtor

Select one ☐ Business ☐ Individual

Business Name or Last Name	First Name	Middle Name	Birthdate (if known) dd/mm/yy
Street Address	City	Province	Postal Code

Debtor

Select one ☐ Business ☐ Individual

Business Name or Last Name	First Name	Middle Name	Birthdate (if known) dd/mm/yy
Street Address	City	Province	Postal Code

Debtor

Select one ☐ Business ☐ Individual

Business Name or Last Name	First Name	Middle Name	Birthdate (if known) dd/mm/yy
Street Address	City	Province	Postal Code

Secured Party

Select one ☐ Business ☐ Individual

Secured Party Code	Business Name or Last Name	First Name	Middle Name
Street Address	City	Province	Postal Code

Secured Party

Select one ☐ Business ☐ Individual

Secured Party Code	Business Name or Last Name	First Name	Middle Name
Street Address	City	Province	Postal Code

Secured Party

Select one ☐ Business ☐ Individual

Secured Party Code	Business Name or Last Name	First Name	Middle Name
Street Address	City	Province	Postal Code

General Collateral Additions

General Collateral - Description

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. On the left side, there is a vertical margin line, creating a narrow left margin. The paper appears to be from a notebook or a standard ruled sheet. There is no handwriting or other markings on the page.

Court Order, Other Changes and Additional Information

Select type of particulars:

☐ Court Order
Particulars:

☐ Other Change
Particulars:

☐ Additional Information
Particulars:

ALBERTA REGISTRIES
PERSONAL PROPERTY REGISTRY
P.O. BOX 2022
EDMONTON, ALBERTA
T5J 4M5

VERIFICATION STATEMENT

REGISTERING PARTY:

REGISTRY AGENT ACCT
10TH FLOOR BROWNLEE BUILDING
EDM AB T5J 2W3

SUBMITTED CONTROL #: XR0007079 FOR FINANCING STATEMENT
REGISTRATION #: 99021000015 REGISTRATION DATE: 10 FEB 1999

REGISTRANT CODE: 50003011
REGISTRANT TYPE: BUSINESS
PHONE #:
REFERENCE #: SAMPLE ONLY

=====

USE THIS FORM TO RENEW OR DISCHARGE A REGISTRATION. INDICATE THE
TYPE OF CHANGE BY TYPING 'X' IN THE APPROPRIATE BOX. COMPLETE THE
REQUIRED INFORMATION AND SIGN BELOW.

=====

(NOTE: BEFORE RETURNING, MAKE A PHOTOCOPY FOR YOUR FILE)

— REGISTRATION RENEWAL?
FOR PPSA, SALE OF GOODS, AND FACTORS ACT, TYPE NO. OF YEARS (1-25)
OR "X" FOR INFINITY _____

— TOTAL DISCHARGE TO PERMANENTLY REMOVE ALL RECORD OF THE
REGISTRATION(S).
=====

AUTHORIZED SIGNATURE

TYPE NAME OF PERSON SIGNING: _____

SIGNATURE: _____

AREA CODE & PHONE #: _____

YOUR REFERENCE #: _____

ALBERTA REGISTRIES
PERSONAL PROPERTY REGISTRY
P.O. BOX 2022
EDMONTON, ALBERTA
T5J 4M5

VERIFICATION STATEMENT

SUBMITTED CONTROL #: XR0007079 FOR FINANCING STATEMENT
REGISTRATION #: 99021000015

REGISTRATION TYPE : STATUTORY CHARGE
REGISTRATION TERM : INFINITY
STATUTORY CHARGE AMOUNT : \$5,000.00

DEBTORS

BLOCK #: 0001
TYPE : INDIVIDUAL BIRTH DATE: 2 JUN 1961
DEBTOR : TESTING, NAME
STREET : 123 STREET
CITY : CALGARY PROVINCE: AB POSTAL CODE: F5TH6Y

BLOCK #: 0002
TYPE : INDIVIDUAL
DEBTOR : DOE, JOHNATHAN
STREET : 456 TEST STREET
CITY : RED DEER PROVINCE: AB POSTAL CODE: T5H7U8

SECURED PARTIES

BLOCK #: 0001
TYPE : BUSINESS
PARTY : TEST NAME FOR MUNICIPALITY
STREET : 10TH FLOOR TESTING BUILDING
CITY : CALGARY PROVINCE: AB POSTAL CODE: T5J2W3

COLLATERAL: SERIAL NUMBER GOODS

BLOCK #	SERIAL #	YEAR	MAKE AND MODEL	CATEGORY
0001	XYZ123ABC	1998	COZY HOME SERIES II	MF

ALBERTA REGISTRIES
PERSONAL PROPERTY REGISTRY
P.O. BOX 2022
EDMONTON, ALBERTA
T5J 4M5

VERIFICATION STATEMENT

SUBMITTED CONTROL #: XR0007079 FOR FINANCING STATEMENT
REGISTRATION #: 99021000015

COURT ORDERS, OTHER CHANGES AND ADDITIONAL INFORMATION

BLOCK #: 0001
TYPE : ADDITIONAL INFORMATION
DESCRIPTION :
MANUFACTURED HOME TAX RECOVERY LIEN - DIVISION 8.1 - PART 10 OF
THE MUNICIPAL GOVERNMENT ACT.

***** END OF VERIFICATION STATEMENT *****

Tax Agreement

Disclaimer: This Agreement is provided as an example of a tax agreement concerning tax recovery on designated manufactured homes. Municipalities wishing to enter into such a tax agreement are strongly encouraged to contact their lawyer with respect to the drafting of the particular agreement. The inclusion of this Agreement within this manual is in no way intended as an endorsement of this Agreement.

MEMORANDUM OF AGREEMENT made in duplicate this ____ day of _____, ____.

BETWEEN:

(Hereinafter referred to as the "Designated Manufactured Home Owner")

AND

(Hereinafter referred to as the "Municipality")

WHEREAS, the Designated Manufactured Home Owner is the owner of the designated manufactured home legally described as *(include serial number, year, make, model of modular home, mobile home, or travel trailer)*:

(Hereinafter after referred to as the "Designated Manufactured Home") and,

WHEREAS, there are tax arrears in respect to the Designated Manufactured Home and it is subject to tax recovery proceedings; and

WHEREAS, the Designated Manufactured Home Owner wishes to enter into an agreement to provide for the timely payment of all tax arrears, levies, penalties, other legitimate costs and those future taxes that will be levied during the term of this Agreement; and

WHEREAS, the Municipality is agreeable to entering into such an agreement, pursuant to section 436.09(4) of the *Municipal Government Act* (MGA);

NOW THEREFORE this Agreement witnesses that in consideration of the mutual terms, covenants, and conditions herein, the parties hereto agree as follows:

1. TERM OF THIS AGREEMENT

The term of this Agreement shall be from _____, ____ to _____, _____. (Note: The term of the agreement can not exceed three years.)

2. METHOD OF PAYMENT

- a) Payment shall be made as calculated within "Schedule A," hereto attached and forming part of this Agreement.
- b) Payment shall be received on the _____ day of each month beginning on the _____ day of _____, _____.
- c) The Designated Manufactured Home Owner hereby acknowledges and agrees that if he or she fails to make payment in accordance with 2(a) above, unless prior written waiver is provided by the Municipality, during the term of this Agreement, this Agreement shall be null and void and the Municipality shall be entitled to proceed with tax recovery actions in accordance with the MGA.
- d) Should the Designated Manufactured Home Owner sell the designated manufactured home at any time during the term of this Agreement, all tax arrears, penalties, and other costs to which the Municipality is entitled under Division 8.1 of Part 10 of the MGA shall immediately become due and payable.

3. MUNICIPAL RESPONSIBILITIES

- a) The Municipality agrees that it shall not pursue tax recovery proceedings relating to the Designated Manufactured Home while this Agreement is in effect.
- b) The Municipality further agrees that upon full payment of all arrears, the tax recovery lien shall be removed within thirty (30) days of funds being deposited with the Municipality.

4. GENERAL

- a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and, except as hereinafter may otherwise be provided, upon their executors, administrators, successors and assigns, if any.
- b) This Agreement shall be interpreted and governed in accordance with the laws of the Province of Alberta, and the forum for all disputes arising from this Agreement shall be the Courts of the Province of Alberta.
- c) All terms, conditions and covenants within this Agreement shall be severable. Should any term, condition, or covenant herein be declared invalid or unenforceable by any court having the jurisdiction to do so, the remaining terms, conditions and covenants of this Agreement shall not be thereby affected and shall remain in full force and effect.

5. TERMINATION

This Agreement shall come to an end:

- a) if the Designated Manufactured Home Owner fails to make a payment contemplated by this Agreement on the date it is required;
- b) if the Designated Manufactured Home Owner files for, or is placed in, bankruptcy; or
- c) if some other party takes legal proceedings in respect of the Designated Manufactured Home.

Upon termination, the full amount of the outstanding taxes (including interest) is immediately payable to the Municipality.

6. REPRESENTATIVES

For the purposes of this Agreement, the following named individuals are the representatives of the parties to this Agreement and are hereby enabled to perform all obligations of the parties to this Agreement as contained within this Agreement:

For the Designated
Manufactured Home Owner:

For the Municipality

(Name)

(Name)

(Address)

(Address)

(Municipality)

(Municipality)

(Phone)

(Phone)

7. SIGNATURE

Witness

Witness

Designated Manufactured Home Owner

Municipality

Schedule A

**1. Description of Designated Manufactured Home
Tax Arrears Payment Calculations for**

(Description of Designated Manufactured Home)

2. Payment Calculation

Current Tax Arrears and Penalties \$ _____

Anticipated Taxes Levied

- Property \$ _____
- Business \$ _____
- Other (e.g. penalty) \$ _____

Total Tax \$ _____

3. Payment Schedule

Payment shall begin on the _____ day of _____ and shall be made:
weekly ☐ monthly ☐ quarterly ☐ other _____ ☐ thereafter.

4. Payment Calculation

Total Tax \$ _____ divided by _____ = \$ _____
(# of payments) (payment amount)

Letter - Early Notice (Optional)

[Date]

[[Name]
[Address]

Dear [Name]

This letter is to inform you that your property taxes for the XXXX year are now in tax arrears. If payment in the amount of \$XXX is not received by March 31 we will, under Provincial law, be required to start tax recovery proceedings. The end result of this process may be the sale of your designated manufactured home. This is a result that I believe we both wish to avoid. Please contact this office at (XXX) XXX-XXX to discuss this matter further or to make arrangements for the payment of the outstanding taxes.

Thank you.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Letter – Notice of Tax Arrears and Possible Sale at Public Auction

[Date]

Dear XXX

This letter is to advise that a tax recovery lien has been registered against your designated manufactured home relating to the non-payment of your property taxes for the XXXX year. If this amount is not paid by March 31 of next year the municipality will offer your designated manufactured home for sale at public auction.

If you wish to discuss this matter further or make arrangements for payment, please contact this office at (XXX) XXX-XXXX.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Note: Also send similarly worded letter to owner of designated manufactured home community and each individual/organization with registration against designated manufactured home.

Letter – Notification of Public Auction

[Date]

[Name]
[Address]

Dear [Name]:

Enclosed is a copy of the advertisement relating to the public auction of your designated manufactured home.

If payment is made with respect to the outstanding taxes, the auction can be cancelled. If you have any questions regarding the public auction, or with respect to payment options please contact me at (XXX) XXX-XXXX.

Sincerely,

John Doe
Title (e.g., Chief Administrative Officer)
Municipality of Anywhere

Note: Also send similarly worded letter to owner of designated manufactured home community and each individual/organization with registration against designated manufactured home.

Public Auction Guidelines

The following are guidelines for conducting a public auction:

- Declare the public auction open.
- Advise the audience of the auction procedures - how the auction will be conducted.
- Repeat the terms and conditions as outlined in the advertisement: for example, full payment, partial payments (percent down with remainder over a prescribed period, etc).
- Announce that you will be reading, only once, the description of each property that is being offered for sale. If there are no bids you will automatically go on to announce the next property up for bid. Bidders will not be able to go back and bid on properties that have closed (which is after subsequent properties have been put up for auction). The order of properties being auctioned will follow the order presented in the advertisement.
- Announce that the bidders will be notified of the reserve bid for each property at the time it is put up for auction.
- Remind the bidders that if there are any questions, they should ask them now: they may question specifics of a particular property at the time the property is offered.
- Let potential bidders know that after all properties have been announced, the auction will be concluded for that property. There will not be an opportunity to bid after that time.
- Notify the successful bidders that payment for properties will be received after bidding has been concluded for all properties.
- If there is a question and you do not know the answer, **delay** the auction until you are able to obtain and give an answer. You can adjourn the auction to any date within 2 months after the advertised date.
- If you have hired a private auctioneer, it is advisable to have a municipal representative present at the auction to verify that the proper processes and procedures have been followed. This is important so that the council is not put in an awkward position by dissatisfied bidders following the auction.
- Minutes and/or a report of the auction should be kept and the information included in a report to council. For example, list properties offered, properties receiving bids and information on the successful bidders for each property.

Unit 4:

***Recovery of Taxes
not Related to Land***

UNIT 4: RECOVERY OF TAXES NOT RELATED TO LAND

Unit 4.1: Overview Part 10, Division 9

Introduction

Although this Section is designed to help municipalities to understand and administer the *Municipal Government Act* (MGA), it is strongly recommended that they read Part 10, Division 9 and familiarize themselves with it so that they understand the context of the information they are about to read.

The Purpose of Part 10, Division 9

Division 9 provides for the collection of tax arrears not related to land. The taxes to which Division 9 applies are: a business tax, a well drilling equipment tax or, a property tax imposed in respect of property referred to in section 304(1)(c), (f), (g), (h), (i), (j) or (k) of the MGA. Division 9 provides for the seizure of personal property of the person responsible for the taxes, through an order called a "distress warrant," to enforce collection of the tax arrears.

When are Taxes in Arrears?

The tax arrears provisions of Division 9 are different than the provisions that apply to Division 8 and Division 8.1. Therefore, before discussing the tax recovery process, it is important to understand when taxes are in arrears.

The MGA identifies outstanding taxes in two different ways, taxes that are "unpaid" and taxes that are in "arrears." It is important to understand the difference between these terms so that collection of the tax arrears is not pursued too early or the municipality does not wait too long before exercising its rights under Division 9.

Section 437(d) of the MGA defines "tax arrears" as "taxes that remain unpaid after the expiry of the period for payment."

The "period of payment" (section 437(b)) is defined as:

- (i) if the person liable to pay the tax is a resident of the municipality, the 14 days following the sending of the tax notice by the municipality, or
- (ii) if the person liable to pay the tax is not a resident of the municipality, the 30 days following the sending of the tax notice by the municipality;

It is important to ensure that the person or business considered in tax arrears under Part 10, Division 9 is the "assessed person" identified under Column 2 of section 304 of the MGA, the person liable to pay a business tax according to section 373 of the MGA, or the person liable to pay a well drilling equipment tax according to section 389 of the MGA.

The Tax Recovery Process

Preparing a Distress Warrant

Section 437 of the MGA defines a distress warrant as “written instruction to seize goods of the person named in the warrant.”

Basically, a distress warrant is the formal authorization from the municipality directing a civil enforcement agency or a designated officer of the municipality to enforce the collection of the tax arrears through the seizure of personal property.

Section 439

The tax recovery process provided for within Part 10, Division 9 begins with the preparation of a distress warrant. Prior to the issuance of the distress warrant, the municipality will have to determine who will be acting on its behalf regarding the preparation, issuance and enforcement of the distress warrant. It may use a civil enforcement agency (previously known as a “sheriff”) or the municipality may use one of its staff, who must either be, or be appointed as, a designated officer.

The distress warrant should:

- a) identify the person or agency authorized to act on behalf of the municipality;
- b) identify the person or business whose personal property is being seized;
- c) include the amount of the debt to be satisfied;
- d) identify the location of the personal property to be seized;
- e) include the date, the location where the warrant is signed, and the name of the person authorizing the issuance of the distress warrant.

An example of a distress warrant is included on page 84.

The distress process used by the designated officer or the civil enforcement agency is guided by the MGA, not the *Civil Enforcement Act*.

The nearest civil enforcement agency can be located by contacting the Sheriff's Civil Enforcement Office at (780) 422-2481.

Except when specifically authorized, a distress warrant must not be issued until the period for payment has expired. If circumstances require, the municipality may apply to a justice of the peace for an order authorizing it to issue the distress warrant before the period of payment expires (section 442).

For example, if the municipality is aware that an oil company intends to move some equipment out of the municipality and the period of payment has not expired, the municipality may make application for a justice of the peace to allow it to issue the distress warrant prematurely.

Seizure of Goods

Section 440

Once the distress warrant has been issued, the civil enforcement agency or designated officer must place **sufficient** goods under seizure to satisfy the claim shown on the warrant.

Section 441

It is important that the value of enforcement and other legal costs be taken into account when determining the value of the goods to be seized. For instance, if the costs for the civil enforcement agency are estimated to be \$800, these costs may be included in the value of the goods to be seized.

The person or agency directing the seizure must ensure that the value of the goods is sufficient to satisfy the value of the tax arrears and other lawful expenses of the municipality.

For example, a person owes \$8,000 in tax arrears and the municipality's expected lawful expenses are \$1,000. If the person has a house valued at \$80,000, the civil enforcement agency cannot place the house under seizure. If that person has a boat valued at \$3,000, a stereo valued at \$1,000 and a truck valued at \$5,000, those items could be seized because their total value is equal to the person's tax arrears. A motor home valued at \$9,000 could also be seized to satisfy the tax arrears.

While not a requirement of the tax recovery process, it would be prudent for the municipality to have an independent appraiser determine the value of the goods at the time of seizure.

Section 441

The following goods may be seized under a distress warrant:

- (a) Goods belonging to the person who is liable to pay the tax arrears or in which that person has an interest;
- (b) Goods of a business that is liable to pay business tax arrears, even if the goods have been sold to a purchaser of the business; and
- (c) Goods of a corporation that are in the hands of
 - i) a receiver appointed for the benefit of creditors,
 - ii) an authorized trustee in bankruptcy, or
 - iii) a liquidator appointed under a winding-up order.

If the person who is responsible to pay the taxes is storing goods for someone else, the municipality must not seize those goods. Therefore, it is prudent to check on the ownership of the goods the municipality is seizing.

When serving the distress warrant the person or agency acting on behalf of the municipality must also include a "Notice of Seizure of Personal Property" (shown on

page 86). This form identifies the person whose personal property is being seized and lists the property being seized. A "Notice of Objection to Seizure of Personal Property" form (shown on page 87) must also be provided at the time the "Notice of Seizure of Personal Property" is served.

Bailee's Undertaking

Section 440(2)

The designated officer or civil enforcement agency placing the goods under seizure may ask the person who owns or has possession of the seized goods to sign a bailee's undertaking. This form is shown on page 85.

The bailee's undertaking is an agreement between the municipality and the person whose property is being seized or, in the case where a third party is storing property for the person whose property is being seized, that person. By signing the bailee's undertaking the individual is agreeing to hold and be responsible for the seized property for the municipality. The individual also agrees to deliver the personal property whenever and wherever it may be required. This means that the municipality does not have to remove the goods from the property. If the person refuses to sign a bailee's undertaking, the designated officer or the civil enforcement agency is allowed to remove the goods from the premises.

Leaving seized goods in their environment is especially useful in cases where removing them is complicated or impossible. For instance, if an oil company owes \$8,000 in tax arrears and the municipality places \$8,000 worth of pumps under seizure, it will be much easier to leave the pumps in place and simply earmark them as having been seized. Once the goods have been placed under seizure and the bailee's undertaking signed, only the municipality - not the person from whom they have been seized - can legally remove or sell them.

If seized goods are left in their place, there is a chance that someone else may remove them, leaving the municipality with nothing to cover its tax arrears. Therefore, the municipality should consider the implications and risk to the municipality before agreeing to leave the seized goods.

Once a bailee's undertaking has been signed, the goods specified in it are considered seized until the municipality abandons the seizure by written notice or sells the goods at a public auction. In addition, the goods are to be released from seizure if the taxes and the municipality's lawful expenses are paid before the goods have been sold.

If a bailee's undertaking is signed the municipality is not liable for wrongful or illegal seizure or for loss or damage to the goods that it has seized.

Right to Pay Taxes

Section 443

Once the goods have been seized under a distress warrant any person may pay the taxes until the goods are sold under section 446 or acquired by the municipality under section 448.

Do not release the goods from seizure until the arrears and penalties are paid in full (e.g., the cheque clears the bank). Remember, after a notice is removed, it is not possible to have it reinstated without starting the tax recovery process from the beginning.

Advertising the Auction

Section 445

Advertisement of the public auction must be posted not less than 10 days before the date of the auction in at least 3 public places in the municipality near the goods to be sold.

The information in the advertisement must specify the date, time, and location of the auction, a description of the goods to be sold, and the name of the person whose goods are to be sold. The advertisement must also include any conditions of the sale (e.g., cash only, percentage down, or payment by a specified date). As well, the advertisement must state that the municipality will become the owner of any goods not sold at the auction immediately after the public auction.

The advertisement of the public auction must be properly posted. If the above requirements are not met the auction results can be nullified.

Date of Auction

Section 446

Unless the municipality has started another type of legal action under another Act or common law right, the municipality must hold a public auction not more than 60 days after seizing the property.

Section 447

There is one exception: grain does not have to be sold at public auction. The grain can be hauled to an elevator or other convenient storage place and be disposed of at the current market price.

Adjourning the Auction

Section 446(2)

The municipality may adjourn the public auction by posting new auction notices in at least 3 public places in the municipality near the goods showing the date when the auction will occur.

Adjournments are often put in place to extend the time so that the auction will fit within advertisement or notification requirements when those requirements are in danger of not being met. If payment is made shortly before an auction, the municipality should adjourn, rather than cancel, the auction to ensure that the cheque clears the bank.

Holding the Auction

The municipality must hire an auctioneer to conduct the auction. Under a *Public Auctions Act* regulation, goods taken in distress for the recovery of tax must be sold by a qualified auctioneer.

Once the auctioneer declares the goods as sold, the sale is final and no further approval is required.

The municipality should maintain a record of sale activities for reporting to council. While no report is required, a report provides council with information in case a sale is protested.

Municipal Responsibilities/Rights Following the Auction

Section 448

The municipality becomes the owner of any goods offered for sale that are not sold at a public auction immediately after the public auction, and may dispose of the goods by selling them. There is no need for the establishment of a reserve bid.

Proceeds from Sale of Goods

Section 449

The money received from the sale of the goods must first be deposited into a separate account specifically established for Division 9 tax recovery proceeds. The municipality must then pay in order of priority:

- 1) the tax arrears and,
- 2) any other lawful expense incurred by the municipality in respect of the goods.

Examples of lawful costs are: civil enforcement agency fees, advertising costs, auctioneer costs, filing fees, legal costs, etc.

Distribution of Surplus Sale Proceeds

Section 450

If there are any funds remaining, the municipality must notify the previous owner that there are surplus funds, and that the owner may apply to the Court of Queen's Bench for the money. This application may be made within 5 years after the date of the public auction.

For example, assume that the municipality has seized goods valued at \$10,000. The tax arrears are \$8,000. The civil enforcement agency costs, advertising costs and auction costs are estimated at another \$2,000. At the public auction the goods sell for \$10,900. Actual enforcement and auction costs total \$1,700.

The municipality must deposit the full \$10,900 into its Division 9 tax recovery proceeds account. It then transfers \$9,700 to its general revenue account to cover the tax arrears. Separate transactions should occur to pay the civil enforcement agency and the auctioneer. A balance of \$1,200 will remain. The municipality must advise the previous owner of the surplus funds, advise him or her of the right to apply to the Court of Queen's bench, and then maintain the funds, including interest, for a period of 5 years. It is up to the Court to decide whether any person other than the applicant should be notified.

Seizure of Designated Manufactured Homes

Section 451

In addition to the provisions of Division 8.1, a municipality may use the provisions of Division 9 to seize designated manufactured homes located in a manufactured home community regardless of any exemption under the *Civil Enforcement Act*.

Alternative Collection Options

Collection of Rent

Section 444

If the distress warrant has been issued to recover tax arrears in respect of a business, and the person who is liable to pay the business tax arrears owns property and leases or rents the property to one or more tenants, the municipality may direct those tenants to pay their rent to the municipality until the business tax arrears have been paid.

Not less than 14 days before notifying a renter to pay rent to the municipality, the municipality must notify the owner of the municipality's intent. The municipality's only interest in the parcel at this time is to collect rent to pay the tax arrears.

If the municipality exercises this option, it may still pursue the distress warrant options or any other right to collect taxes.

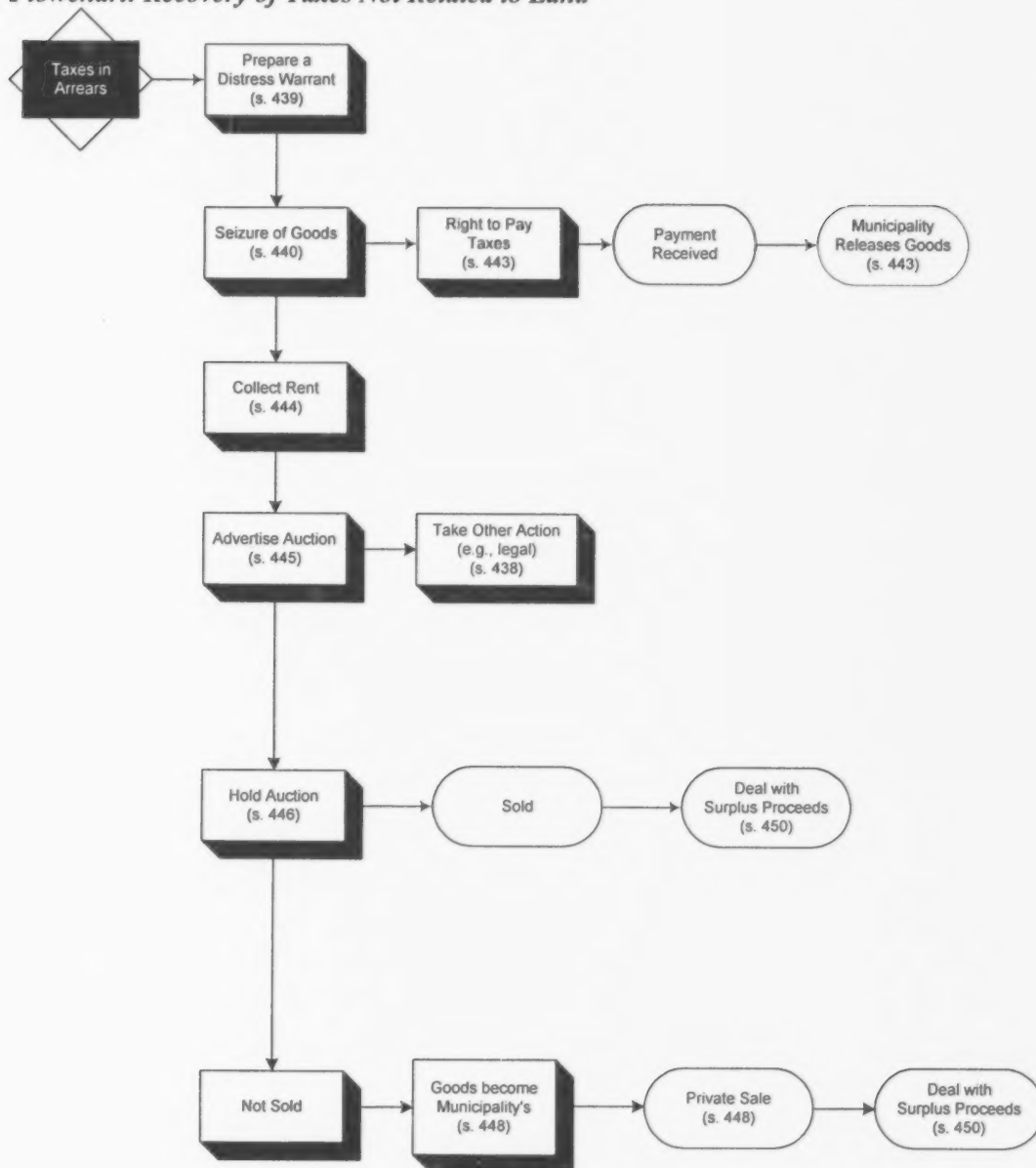
Unit 4.2: Flowchart and Checklist

Introduction

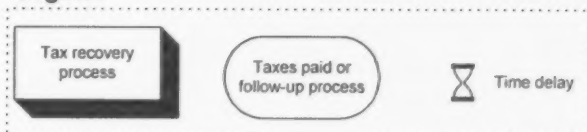
The following flowchart provides a visual outline of the various steps and requirements outlined in Division 9, Recovery of Taxes Not Related to Land.

The checklist highlights the main requirements of Division 9.1 and provides a cross-reference to those sections.

Flowchart: Recovery of Taxes Not Related to Land



Legend



MGA Section	Action	Date Completed	Person Completing Action
442	☐ Period of Payment determined to have expired. Date of Tax Notice: _____ Person liable for taxes lives: ☐ in municipality (14 days). ☐ outside municipality (30 days).		
439	Prepare Distress Warrant. ☐ Authorize designated officer, in writing, to prepare a Distress Warrant or, ☐ Appoint staff member to position of designated officer, and authorize in writing the preparation and issuance of Distress Warrant or, ☐ Hire a Civil Enforcement Agency.		
449	Estimate of Tax & Other Costs Amount of taxes owing \$ _____ Estimated total lawful costs \$ _____		
440	☐ Seize Goods Date Seized _____ Items Seized:		
441	<u>Description</u> <u>Serial #</u> <u>Estimated Value</u> TOTAL: ☐ Bailee's Undertaking Signed (optional)		
440	Seizure discontinued because: ☐ Taxes Paid ☐ Abandoned Reason _____ (Section 440(5)(a)) ☐ Other (e.g., Court Order) _____ (describe)		
443	☐ Tax arrears, penalties and costs are paid in full (anytime prior to public auction). Date Paid _____		

Municipal Checklist
Recovery of Taxes Not Related to Land

MGA Section	Action	Date Completed	Person Completing Action				
444	☐ Collection of Rent for Business Tax arrears. Notice sent to person liable to pay tax (if a property owner) 14 days prior to notification of renter advising of municipality's intention to collect rent. Date Sent _____						
445	Sale of Personal Property ☐ Municipality has initiated other action under 438(2). Auction delayed. If not, then: • Set date for Auction (must be within 60 days after goods seized - section 446). Date for Auction: _____ • Post notice in at least 3 public places close to goods advertising date of auction (at least 10 days notice). Locations Posted: _____ _____ ☐ • Notice must include date, time, location, conditions of sale, description of goods to be sold, and name of person whose goods are to be sold, and must also state that the municipality will become the owner immediately after auction if goods are not sold.						
446	Adjournment of Public Auction • Auction adjourned to: _____ • Post notice in at least 3 public places close to goods advertising new date of auction (at least 10 days notice). Locations Posted: _____ _____ ☐ • Notice must include date, time, location, conditions of sale, description of goods to be sold, and name of person whose goods are to be sold, and must also state that the municipality will become the owner immediately after auction if goods are not sold.						
447	Sale of Grain Grain seized: <table border="0" style="width: 100%;"> <tr> <td>Type</td> <td>Grade</td> <td>Sold At</td> <td>Price</td> </tr> </table>	Type	Grade	Sold At	Price		
Type	Grade	Sold At	Price				

Municipal Checklist

Recovery of Taxes Not Related to Land

MGA Section	Action	Date Completed	Person Completing Action
448	☐ Goods not sold at auction so municipality becomes owner Municipality: ☐ retained ownership ☐ sold personal property		
448	Money received: Item Serial # \$ Received		
449	Money paid for goods sold at the public auction, sold after the public auction, or paid through a lease or rent are to be deposited into a separate account designated solely for Division 9 tax recovery proceeds. Surplus funds are determined as follows: Revenue from the sale and/or leases \$ _____ Less: (in order of priority) Tax arrears \$ _____ Lawful expenses of the Municipality (e.g., Sheriff's fee) \$ _____ Balance: Tax Recovery Surplus \$ _____ ☐ If there are surplus proceeds following a sale, the municipality must notify owner of surplus dollars		
450	☐ If there are surplus funds, the previous owner can make application to the Court of Queen's Bench to obtain the surplus funds.		

Notes:

Unit 4.3: Forms and Letters

Distress Warrant

(Name and Address of Designated Officer)

Is instructed to seize the personal property of

(Name and Address of Debtor)

in order to satisfy an outstanding debt of: \$ _____ owing to

(Municipality)

plus all lawful costs.

The goods to be seized are to be found at

(location of property to be seized)

Dated at _____ Alberta, on _____

Signature of Designated Officer

Print Name of Designated Officer

Address of Designated Officer

Municipality

Province

Postal Code

Telephone

Fax

Bailee's Undertaking

In consideration of the seized personal property listed in the attached Notice of Seizure of Personal Property being left in my possession, I agree to act as Bailee for the Civil Enforcement Agency and keep the said personal property in good condition at:

Address or Land Location where Personal Property Will Be Stored.

and deliver it to the Civil Enforcement Agency whenever and wherever it may be required.

I understand that non-delivery or conversion of the personal property may result in a conviction under the Criminal Code for which a term of imprisonment may be imposed.

Dated at _____, Alberta, on _____

Bailee:

Signature of Bailee

Print Name

Address of Bailee

City

Province

Postal Code

Telephone Number

Fax Number

Signature of Witness

Print Name

Address of Witness

City

Province

Postal Code

Telephone Number

Fax Number

Name of Civil Enforcement Agency

Address of Civil Enforcement Agency

City

Province

Postal Code

Telephone Number

Fax Number

NOTE: ATTACH TO EACH COPY OF THE NOTICE OF SEIZURE OF PERSONAL PROPERTY.

Oct 01/95

Notice of Seizure of Personal Property

TO: _____

Name and Address of Debtor

Take notice that to satisfy a claim against you for the sum of \$ _____ plus costs and related Writs, if applicable.

Name and Address of Creditor

has caused the following personal property and personal property listed in the addendum to be seized:

Addendum attached listing additional property. ☐ Yes ☐ No

Notice of Objection applicable to this seizure. ☐ Yes ☐ No

STRIKE OUT IF NOT APPLICABLE | If you object to the seizure, you must deliver the Notice of Objection to the Civil Enforcement Agency listed below within 15 days from the day that the seizure documents were served.

Dated at _____, Alberta, on _____

Bailiff's Signature

Print Name

Name of Civil Enforcement Agency

Address of Civil Enforcement Agency

City

Province

Postal Code

Telephone Number

Fax Number

Notice: If you have concerns about the way that this seizure was conducted, contact the Civil Enforcement Agency listed above. If you are unable to resolve your concerns with the Civil Enforcement Agency, you may contact the Sheriff - Civil Enforcement at (780) 422-2481.

Jun 8/05

Page _____ of _____

Notice of Objection to Seizure of Personal Property

TO: _____

Name, Address and Fax Number of Civil Enforcement Agency

This Notice of Objection to Seizure of Personal Property will not be accepted if
a reason for the objection is not provided.

I object to the seizure of the personal property mentioned in the Notice of Seizure of Personal Property for the
following reason(s):

(IF ADDITIONAL SPACE REQUIRED, PLEASE WRITE ON REVERSE.)

IF YOU OBJECT TO THE SEIZURE OF PERSONAL PROPERTY, THIS NOTICE MUST BE DELIVERED TO THE
ABOVE NOTED CIVIL ENFORCEMENT AGENCY WITHIN 15 DAYS OF THE DATE ON WHICH THE SEIZURE
DOCUMENTS WERE SERVED.

If there is no valid reason for objecting to the seizure of the personal property, the sending of this notice may
result in increased costs to you.

Dated at _____, Alberta, on _____

THE FOLLOWING MUST BE COMPLETED

Signature of Debtor _____ Print Name _____

Mailing Address of Debtor _____ City _____

Province _____ Postal Code _____ Telephone Number _____ Fax Number _____

Oct 01/95

Unit 5:

Glossary & Links

UNIT 5: GLOSSARY AND LINKS

Administrative Fee	In the event of surplus proceeds, a commission of 5 percent of the sale price is paid to the municipality (Divs. 8 & 8.1 only).
Alberta Gazette	The official government advertising medium for legal notices.
Arrears (Div. 8)	Property taxes owed beyond December 31 st of the year in which they were levied.
Arrears (Div. 8.1)	Property taxes owed beyond December 31 st of the year in which they were levied.
Arrears (Div. 9)	Taxes owed beyond the period of payment (see Period of Payment).
Arrears List	The official list of properties on which taxes are in arrears for more than one year (and possibly less than one year for Division 8.1).
Assessed Person	A person who is named on an assessment roll in accordance with section 304 of the MGA.
Conditions of Sale	Those details, as established by council, that relate to the manner of payment and/or other factors governing how the sale will be conducted.
Expenses	Any documented and justifiable costs incurred by the municipality against a property during the tax recovery process.
Fee Simple	In land ownership, the full authority to use and dispose of a property, subject only to payment of taxes, government powers and agreements made by the owner.
Improvement	A structure, anything attached or secured to a structure that would be transferred without special mention by a transfer or sale of the structure, a designated manufactured home, and/or machinery and equipment.
Lease	An agreement granting possession of property during the life of a person or for a fixed period, usually in exchange for rent. This can be a means of generating revenue to be applied against tax arrears.

Market Value	The amount that a property (as defined in section 284(1)(r)) or a designated manufactured home (as defined in section 284(1)(f.1)) might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.
Occupied Property	Land is considered occupied when it is used as a residence, place of business, or is being cropped, grazed, fallowed, logged or reserved for hay.
Owner (Div. 8)	The person who has registered title to the fee simple estate.
Owner (Div. 8.1)	The owner of the designated manufactured home and not the person in possession.
Owner (Div. 9)	The person who has the lawful possession of the goods.
Penalties	A charge for unpaid taxes which are in addition to the amount of tax owed. Penalties must be authorized by a bylaw passed under section 344 or 345 of the MGA, or both.
Period of Payment (Div. 9)	If the person liable to pay the tax is a resident of the municipality, the 14 days following the sending of the tax notice by the municipality; or if the person liable to pay the tax is not a resident of the municipality, the 30 days following the sending of the tax notice by the municipality.
Private Sale	A sale under Division 8 or 8.1 by the municipality after the parcel of land or designated manufactured home has been offered at public auction but not sold there. The sale must be at market value.
Proceeds	The total amount realized from a public auction or private sale, and/or from lease, licence, and/or permit revenues.
Property	May refer to a parcel of land (Div. 8), a designated manufactured home (Div. 8.1), or personal property (Div. 9) as the context requires.

Public Auction	The formal public sale required in the tax recovery process under Division 8, 8.1, or 9. For Divisions 8 or 8.1, the public auction occurs between April 1 st of the year in which a tax recovery notification or tax recovery lien was placed on the property title and March 31 st of the following year.
Recovery	The entire process, including receipt of payment for tax arrears, whether from the registered owner, other party, public auction, or private sale.
Reserve Bid	The minimum sale price set prior to the public auction for a parcel of land or a designated manufactured home. The reserve bid must be set by a council resolution, and is to be set at market value.
Resolution	A formal decision by council which is recorded in the minutes of the council.
Surplus	The amount of money remaining if proceeds from a sale, lease, licence, and/or permit exceed the arrears and other associated costs related to tax recovery proceedings. If a surplus occurs the previous owner must be notified.
Tax Arrears List (Div. 8)	The official list of properties for which taxes are in arrears for more than one year.
Tax Arrears List (Div. 8.1)	The official list of designated manufactured homes for which taxes are owing for more than one year, or less than one year if the municipality so chooses.
Tax Recovery Account	A separate account for tax recovery proceeds where all sale, lease, licence, and/or permit income from the property must be deposited. Separate accounts are required for the tax recovery proceeds under Division 8, Division 8.1, and Division 9, and the rules for each are somewhat different.
Vacant Property	Property not occupied or in use.

The following is a list of links to forms that may be downloaded.

Transfer of Land

<http://governmentsservices.gov.ab.ca/pdf/ltmanual/TRANSFER%20OF%20LAND%20FORM%20AND%20SAMPLE.pdf>

Form 8 – Transfer of Land

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/FORM8.PDF>

Tax Recovery Arrears List

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-1-FORMA.PDF>

Discharge of Tax Recovery Notification

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-2-FORMA.PDF>

Tax Recovery Notice

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-1-FORMB.PDF>

Notice of Sale By Public Auction

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-4-FORMA.PDF>

Notice of Municipal Acquisition

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-3-FORMA.pdf>

Notification of Revival of Title

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/TAX-5-FORMA.PDF>

Form 32 – Affidavit Re Value of Land

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/FORM32.PDF>

Foreign Ownership of Land Regulations

<http://www.governmentsservices.gov.ab.ca/pdf/ltmanual/FOL-1-FORMA.1.pdf>

Financing Statement

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/REG3318.pdf>

Financing Change Statement

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/Reg3323.pdf>

Serial Number Goods Additions

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/Reg3320.pdf>

Debtor/Secured Party Additions

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/Reg3319.pdf>

General Collateral Additions

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/Reg3321.pdf>

Court Order, Other Changes and Additional Information

<http://www.governmentsservices.gov.ab.ca/pdf/PPR/REG3322.pdf>

